

COMMISSION MEETING
ROLL CALL

Tuesday August 15 1995
Baton Rouge LA
Wildlife & Fisheries Building

	Attended	Absent
Perry Gisclair (Chairman)	—	✓
Glynn Carver	✓	—
Jeff Schneider	✓	—
Daniel Babin	✓	—
Joseph Cormier	✓	—
Jerald Hanchey	✓	—
Peter Vujnovich	✓	—

Vice-
Mr ₁ Chairman

There are 6 Commissioners in attendance and we have a quorum
Secretary Herring is also present

LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES

SPECIAL BOARD MEETING

AUGUST 15, 1995

**PERRY GISCLAIR
CHAIRMAN**

BATON ROUGE, LOUISIANA

The following constitute minutes of the Commission Meeting
and are not a verbatim transcript of the proceedings.

Tapes of the meetings are kept at the
Louisiana Department of Wildlife and Fisheries
2000 Quail Drive

Baton Rouge, Louisiana 70808
For more information call (504) 765-2806

AGENDA
LOUISIANA WILDLIFE AND FISHERIES COMMISSION
BATON ROUGE, LOUISIANA
AUGUST 15, 1995

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2. Declaration(s) of Emergency and Notice(s) of Intent to Implement Act 1316, the Louisiana Marine Resources Conservation Act of 1995, including but not limited to, regulations governing:	1
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MINUTES OF THE MEETING
OF
LOUISIANA WILDLIFE AND FISHERIES COMMISSION

Tuesday, August 15, 1995

Vice-Chairman Glynn Carver presiding.

Peter Vujnovich
Jerald Hanchey
Joseph B. Cormier
Jeff Schneider
Daniel Babin

Chairman Perry Gisclair was absent from the meeting.

Secretary Joe L. Herring was also present.

Vice-Chairman Carver began the meeting stating the Commission needed to implement Act 1316, the Louisiana Marine Resources Conservation Act of 1995. He then asked Mr. Don Puckett for an update on this Act. Mr. Puckett stated a hearing was held on Monday, August 14, 1995 with Judge Clark concerning an injunctive suit over Act 1316. A Temporary Restraining Order was issued by the Judge preventing enforcing the provisions of the Act. A hearing on the Preliminary Injunction has been scheduled for August 31, 1995 to determine if the injunction enjoining the enforcement of Act 1316 would occur. Continuing on, Mr. Puckett reminded the Commissioners of rules to be promulgated by the Department and Commission and this meeting was being held to review those proposed rules. Mr. Puckett asked Judge Clark if she had problems with the Commission proceeding to promulgate rules with the idea the law would eventually take effect. According to Mr. Puckett, Judge Clark was aware of the Meeting and that rules would be submitted for approval knowing they would not be in effect until Act 1316 was allowed to take effect. With the hearing being held on August 31, 1995, all of the Declarations of Emergency would have an effective date of September 1, 1995 assuming the Department was successful.

Mr. Puckett then suggested the Commission take action on Declaration(s) of Emergency and Notice(s) of Intent to Implement Act 1316, the Louisiana Marine Resources Conservation Act of 1995, including but not limited to, regulations governing: commercial fisherman's assistance program: proof of income and eligibility; schedule of payments for nets; rod and reel commercial gear license: procedures for proof of income and eligibility; gill nets, trammel nets, strike nets and seines; traverse permit to EEZ; freshwater commercial gill nets and trammel nets: establishment of a marking system; Federal Exclusive Economic Zones (EEZ) regulation governing possession of gill nets, trammel nets, strike nets or seines; permits, regulation and enforcement; spotted seatrout:

season(s) and entry of commercial fisherman into the fishery; black drum, sheepshead and flounder: regulations for the entry of commercial fisherman into the fishery; and mullet: regulations for taking; entry of commercial fisherman into the fishery.

Mrs. Wynnette Kees began her first section on **commercial fisherman's assistance program: proof of income and eligibility** by reading from the Act. This stated an applicant shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in two of the three years from 1993 to 1995. Proof of this shall be in the form of a certified Federal Tax Return and Schedule C. When the tax return does not show proof, the applicant can provide a CPA certified audited return. The Department was still puzzled over the term "earned income". Mr. Fred Prejean stated the Department has come up with a definition of earned income. The definition is: Earned income shall be income, wages, salaries, professional fees, that result from the personal labor or services of an individual. Corporations and partnerships would be reviewed on an individual basis. Mr. Prejean then explained several examples of what would be considered earned income. Mrs. Kees stated the applicants should apply by October 1, and if an applicant has to use 1995 for proof of income, then his application would be held until next year. Commissioner Schneider stated Representative Triche was at the meeting and asked that a copy of the rules be provided to him. Vice-Chairman Carver hoped the meeting would answer questions and could provide the intent of the law. Commissioner Cormier asked if a vote would be taken on each Declaration of Emergency? Mr. Puckett stated each regulation was to be presented as a Declaration of Emergency and Notice of Intent and only one motion would be required for approval. Hearing no further discussion, Commissioner Cormier made a motion to accept the Proof of Income and was seconded by Commissioner Babin. The motion passed with no opposition.

(The full text of the Declaration of
Emergency and Notice of Intent is
made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:13.1.B.(1) adopts the rule set forth below. Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to provide economic assistance to those commercial fishermen who are displaced or severely financially impacted by the loss of the use of commercial fishing nets due to its enactment. Initial promulgation of this rule as a Declaration

of Emergency is necessary because the Act establishes a deadline for implementation which predates the earliest date for promulgation of a final rule through non-emergency rule-making procedures. This Declaration of Emergency shall be effective on September 1, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Wildlife and Fisheries Commission herein establishes procedures for determining proof of income of applicants for economic assistance under R.S. 56:13.1.

An applicant for economic assistance shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the years 1995, 1994, and 1993.

Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

Glynn Carver
Vice-Chairman

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate a rule to establish the procedures for determining proof of income of applicants for economic assistance under the Commercial Fisherman's Assistance Program established by the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

Title 76

WILDLIFE AND FISHERIES

Part XVII. Commercial Fisherman's Assistance Program

Chapter 1. Proof of Income

§101. Criteria for Establishing Proof of Income and Procedures

An applicant for economic assistance shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the years 1995, 1994, and 1993.

Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:13.1.B(1).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22: .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments until 4:30 p.m., November 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000.

Glynn Carver
Vice-Chairman

Mrs. Wynnette Kees presented the schedule of payments for nets. These nets would be purchased from qualified persons those nets are rendered illegal or useless because of Act 1316. The proof of income was established as in the previous section. Also several criteria needed to be met such as buying of a saltwater gill net license, not being convicted of any fishery related offense that is a Class 3 or greater violation, and having been a

bonafide resident on June 30, 1995. The Department would provide a form for the applicants to show they meet all the criteria. The applicant would be notified by mail when the Department would review his application and physically see and evaluate the nets. Mr. Fred Prejean stated the net buy back portion of the Act would end January 1, 1996. Since the source of the revenue to buy back the nets, a \$3 stamp, would not be available until November and in keeping with the intent of the Act, the staff moved the January 1 end date back to June 30, 1996. Referring to a question from Chairman Gisclair at the last meeting, Mr. Prejean stated the economist was available to answer any questions on how the prices were determined. Commissioner Babin asked how the Legal staff felt about moving the date back? Mr. Prejean stated the Legal staff was in support of moving the date. Commissioner Vujnovich asked why did not the legislature allow money be given to the displaced fishermen to feed their families while the fishermen were training for another job. Commissioner Schneider asked if the fishermen can show proof of income, would they qualify for all of the programs and not just be limited to one section?

Mr. George Carmouche, representing Senator Nunez, asked if everyone that owned a recreational license had to buy the \$3 stamp? He felt if there was the flexibility to move the dates in the rule, there may be the ability to require everyone that has to buy the \$3 stamp to do so by a certain date in order to keep their license valid for this year. Discussion continued between Mr. Prejean and Mr. Carmouche on the funding for the program.

Mr. Pete Gericca, Lake Pontchartrain Fisherman's Association, stated there are more people that fish with more than just gill nets and that none of these people would be entitled to the compensation. He then stated he has nets that range from \$700 per net to \$3,000 per net and the schedule for payment does not come close to compensating the fishermen. Then he asked who would pay his bills while he is being trained for another profession?

Commissioner Schneider stated the bill states how 70 percent of the revenue would be used, but asked how would the other 30 percent be used after June 1996? Mrs. Kees stated the Act specifies 30 percent off the top goes to Enforcement for both years. Mr. Brian McManus stated there were many factors to consider in the price of the net. He also stated he contacted six different net dealers to send a copy of their catalog or fax a price list for the different types of nets. He then took an average from the prices and these averages do not include the different options, sales tax, shipping or handling charges. Then considering the fact the nets are used, the staff took one-half of the new price and came up with the schedule. Commissioner Vujnovich explained how he bought a net just to move black drum from his oyster beds and noted the cost of the net he had to buy. Then he asked if the oyster fishermen could be compensated under this program also. He then concluded stating lifestyles in

Louisiana would change in the next five years and not for the better. Commissioner Babin asked if shrimp trawls were to be included in the net buy-back schedule and thought they were not to be impacted by the law. Vice-Chairman Carver asked if this rule was to be promulgated by Department administrators? Mr. Puckett advised it was a Department rule that was put on the agenda for information only. Vice-Chairman Carver then asked if anyone knew the amount of money that would be collected with sale of the stamps; had anyone projected what the buy-back on the nets would be; and would the amount of disbursement of funds be dependent upon the stamps. Commissioner Babin asked what would happen if the nets purchased exceeded the amount collected and what would happen to the rest of the money that may exceed the stamp sales? Then Commissioner Babin asked Representative Warren Triche if the legislators thought how the Department could enforce a law and buy back nets when money was not available.

Representative Warren Triche began stating Act 1316 is law and the rules adopted by the Commission should conform to the Act. He also reminded the Commission the Judge did not have a problem with the Commission implementing and promulgating the rules for the adoption of the law. Then he asked Secretary Herring why has it taken so long for the Department to call him to answer questions pertaining to the bill? Secretary Herring stated the staff has met on the bill since its passage and a lot of problems have been solved. He apologized to Mr. Triche for not contacting him and further stated the Department has not tried to delay or hinder the bill. Representative Triche still felt the Department did delay the implementation of the bill. Again he asked Secretary Herring why he did not call him and why were these rules being promulgated as emergency rules? Secretary Herring stated normally the staff works out new rules by themselves. Representative Triche explained to Commissioner Vujnovich the bill does not affect oyster fishermen, crabbers, fishermen or shrimpers and that the fishermen can use one strike net. Then he stated no one gives a full price value for a product that has been used. The whole problem, stated Representative Triche, was that there were too many nets in the waters right now. He concluded stating the different variables can not be made by staff, Commission or Legislature. Commissioner Vujnovich asked if the nets to capture black drum would be allowed for the duration of the bill or just one year? Representative Triche stated that after the two years using the strike nets, the fishermen would go to a rod and reel fishery.

Mr. Peter Hotaph commented the shrimpers would be affected by the bill because these fishermen survive the winters by fishing for sheepshead and drum fish. Also the oyster fishermen would be affected because of the drum fishery. Then he asked how does he qualify for these assistance program being disabled for two of the three years listed?

Senator Samuel Nunez stated the Governor should have vetoed this bill and the interpretations of the bill should be done by the Commission. He then stated the bills interpretation and language would eventually be settled by the courts. Senator Nunez told the Commissioner's their job was very difficult and asked them to do the best job possible and make the bill work. He then expressed his appreciation for the efforts put on interpreting the bill that would benefit the users. Commissioner Schneider thanked both legislators for their comments and stated his job was to put what was passed into rules and regulations. Vice-Chairman Carver concurred with Commissioner Schneider and stated the Commission was going to implement the bill that passed. With this rule being handled by the Secretary, there was no need for a vote.

(The full text of the Declaration of Emergency and Notice of Intent is made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Office of Management and Finance

The Department of Wildlife and Fisheries is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:13.1.D. adopts the rule set forth below. This Declaration of Emergency is necessary because Act 1316 of the 1995 Legislature mandates the Department of Wildlife and Fisheries to adopt this rule no later than September 1, 1995, which is the effective date of this Declaration of Emergency. It shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Until January 1, 1996, the Department of Wildlife and Fisheries shall purchase from qualified persons those commercial fishing nets that have been rendered illegal or useless due to the enactment of the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

In order to qualify, persons must have applied for assistance under the Commercial Fisherman's Assistance Program on or before October 1, 1995, and must have met all of the following criteria: 1) must have purchased a saltwater gill net license in at least two of the years 1995, 1994, and 1993; 2) during two of those years shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species; 3) shall not have been convicted of any fishery-related offense that constitutes a class three or greater violation; and 4) must have been a bona fide resident of Louisiana on June 30, 1995.

Proof of income shall be provided by the applicant in the form of a copy of his federal tax return, including Schedule C of

federal form 1040, which has been certified by the Internal Revenue Service. The Department of Wildlife and Fisheries can provide the applicant with the appropriate Internal Revenue Service form to request this. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

Beginning September 1, 1995, qualified persons desiring to have their nets purchased by the Department of Wildlife and Fisheries may obtain an application form provided by the department from any departmental district office; the completed form shall include all information necessary to assist in the determination of the eligibility status of the applicant. All requested information regarding size, type and number of nets must be provided. The completed form, along with proof of income as described herein, a copy of the applicants Louisiana driver's license, and copies of appropriate saltwater gill net licenses, shall be submitted no later than October 1, 1995, to the Commercial License Section of Wildlife and Fisheries located at 2000 Quail Drive, Baton Rouge, LA or by mail to P. O. Box 98000, Baton Rouge, LA 70898. Applicants will be notified by mail as to the disposition of their application.

Only those nets that were legal for use in the saltwater areas of this state on June 1, 1995, and only those nets in usable condition, will be eligible for purchase under the provisions of Act 1316 and this Declaration of Emergency.

Applicants must have had a gear license issued in their name for at least one of the years 1995, 1994, or 1993, for the specific type of net(s) being presented for purchase. This is in addition to the requirements for having a saltwater gill net license for two of the three years.

Monetary reimbursement for nets to be purchased under this Declaration of Emergency shall be determined based on the availability of funds collected from the issuance of the Louisiana Marine Resources Conservation Act Stamp. Funds collected through June 30, 1996, will be distributed as follows: 30 percent to the Enforcement Division of the Department in accordance with the Act, and the remaining 70 percent to be made available for the net buy-back portion of the Commercial Fisherman's Assistance Program. Subsequent to June 1996, 70 percent of the revenue collected from the LMRC Stamp will be used for the remainder of the Commercial

Fisherman's Assistance Program as defined in Act 1316, R.S. 56:13.1.C.

The disbursement of available funds for nets shall be calculated on a pro rata basis to accommodate the number of qualified applicants at a rate not to exceed 50 percent of the average cost of each qualifying net. The following is a schedule of the maximum amount to be paid for each type and size of net based upon 50 percent of the average standard 1995 catalog prices not including sales tax, shipping charges, or options. Actual prices to be paid will be limited by the number of qualifying nets and by the amount of revenue collected.

<u>Mesh Depth</u>	<u>Gill Nets</u>	<u>Seines</u>
	<u>Price per foot</u>	<u>Price per foot</u>
4' - 6'	\$.25	\$.76
over 6' - 8'	\$.30	\$.80
over 8' - 10'	\$.38	\$.87
over 10' - 12'	\$.42	\$.92
over 12' - 14'	\$.44	\$.96
over 14'	\$.53	\$ 1.02

	<u>Trammel Nets</u>
	<u>Price per foot</u>
4' - 6'	\$.38
over 6' - 8'	\$.40
over 8' - 10'	\$.43
over 10'	\$.45

	<u>Fish Trawls</u>
Complete	\$ 11.22 per foot of trawl width
Trawl only	\$ 6.84 per foot of trawl width

Joe L. Herring
Secretary

NOTICE OF INTENT

Department of Wildlife and Fisheries
Office of Management and Finance

The Department of Wildlife and Fisheries does hereby give notice of its intent to promulgate a rule to establish a schedule showing the amount to be paid for each type and size of net to be purchased under the Net Buy-Back Program portion of the Commercial Fisherman's Economic Assistance Program and to establish procedures for application. This is in accordance with the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

Title 76

WILDLIFE AND FISHERIES

Part XVII. Commercial Fisherman's Assistance Program

Chapter 3. Net Buy-Back Program

§301. Criteria for Qualification; Procedures

Until January 1, 1996, the Department of Wildlife and Fisheries shall purchase from qualified persons those commercial fishing nets that have been rendered illegal or useless due to the enactment of the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

In order to qualify, persons must have applied for assistance under the Commercial Fisherman's Assistance Program on or before October 1, 1995, and must have met all of the following criteria: 1) must have purchased a saltwater gill net license in at least two of the years 1995, 1994, and 1993; 2) during two of those years shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species; 3) shall not have been convicted of any fishery-related offense that constitutes a class three or greater violation; and 4) must have been a bona fide resident of Louisiana on June 30, 1995.

Proof of income shall be provided by the applicant in the form of a copy of his federal tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. The Department of Wildlife and Fisheries can provide the applicant with the appropriate Internal Revenue Service form to request this. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

Beginning September 1, 1995, qualified persons desiring to have their nets purchased by the Department of Wildlife and Fisheries may obtain an application form provided by the department from any departmental district office; the completed form shall include all information necessary to assist in the determination of the eligibility status of the applicant. All requested information regarding size, type and number of nets must be provided. The completed form, along with proof of income as described herein, a copy of the applicants Louisiana driver's license, and copies of appropriate saltwater gill net licenses, shall be submitted no later than October 1, 1995, to the Commercial License Section of Wildlife and Fisheries located at 2000 Quail Drive, Baton Rouge, LA

or by mail to P. O. Box 98000, Baton Rouge, LA 70898. Applicants will be notified by mail as to the disposition of their application.

Only those nets that were legal for use in the saltwater areas of this state on June 1, 1995, and only those nets in usable condition, will be eligible for purchase under the provisions of Act 1316.

Applicants must have had a gear license issued in their name for at least one of the years 1995, 1994, or 1993, for the specific type of net(s) being presented for purchase. This is in addition to the requirements for having a saltwater gill net license for two of the three years.

Monetary reimbursement for nets to be purchased under this Rule shall be determined based on the availability of funds collected from the issuance of the Louisiana Marine Resources Conservation Act Stamp. Funds collected through June 30, 1996, will be distributed as follows: 30 percent to the Enforcement Division of the Department in accordance with the Act, and the remaining 70 percent to be made available for the net buy-back portion of the Commercial Fisherman's Assistance Program. Subsequent to June 1996, 70 percent of the revenue collected from the LMRC Stamp will be used for the remainder of the Commercial Fisherman's Assistance Program as defined in Act 1316, R.S. 56:13.1.C.

The disbursement of available funds for nets shall be calculated on a pro rata basis to accommodate the number of qualified applicants at a rate not to exceed 50 percent of the average cost of each qualifying net. The following is a schedule of the maximum amount to be paid for each type and size of net based upon 50 percent of the average standard 1995 catalog prices not including sales tax, shipping charges, or options. Actual prices to be paid will be limited by the number of qualifying nets and by the amount of revenue collected.

<u>Mesh Depth</u>	<u>Gill Nets</u>	<u>Seines</u>
	<u>Price per foot</u>	<u>Price per foot</u>
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	<u>Price per foot</u>
4' - 6'	\$.38
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over 8' - 10'	\$.43

over 10'

\$.45

	<u>Fish Trawls</u>
Complete	\$ 11.22 per foot of trawl width
Trawl only	\$ 6.84 per foot of trawl width

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:13.1.D.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Management and Finance, LR 22: .

Interested persons may submit written comments until 4:30 p.m., November 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000.

Joe L. Herring
Secretary

Mrs. Wynnette Kees handled the saltwater commercial rod and reel gear license by stating the procedures for proof of income was identical to the Commercial Fisherman's Assistance Program. Hearing no questions, Vice-Chairman Carver asked Mr. Don Puckett if a motion was needed on this item. Mr. Puckett advised on the Commission rules, one oral motion would approve both the Declaration of Emergency and Notice of Intent. Commissioner Schneider made a motion to accept the Declaration of Emergency and Notice of Intent on the saltwater commercial rod and reel gear license. Commissioner Cormier seconded the motion and passed with no opposition.

(The full text of the Declaration of Emergency and Notice of Intent is made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:305.B.(14)(b) adopts the rule set forth below. Initial promulgation of this rule as a Declaration of Emergency is necessary because Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to implement the Act effective August 15, 1995. This Declaration of Emergency is effective September 1, 1995, and it remains in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Wildlife and Fisheries Commission herein establishes procedures relative to the proof of income of applicants for a saltwater commercial rod and reel gear license.

Each applicant shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the three years, 1995, 1994, and 1993.

Proof of income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service and a copy of his state tax return which has been certified by the Department of Revenue and Taxation. In the event that the certified copies of the tax returns, including Schedule C, do not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

Glynn Carver
Vice-Chairman

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate a rule to establish the procedures relative to the proof of income criteria for applicants for a saltwater commercial rod and reel license in accordance with the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 4. License and License Fees

§405. Saltwater Commercial Rod and Reel License; Proof of Income

Each applicant shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the three years, 1995, 1994, and 1993.

Proof of income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service and a copy of his state tax return which has been certified by the Department of Revenue and Taxation. In the event that the certified copies of the tax returns, including Schedule C, do not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

AUTHORITY NOTE: Promulgated in accordance with 56:305.B.(14)(b).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22: .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments until 4:30 p.m., November 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000.

Glynn Carver
Vice-Chairman

The last section for Mrs. Wynnette Kees was the gill nets, trammel nets, strike nets and seines; and traverse permit to EEZ that would be for both the Commission and Department to act on. The Department would issue a traversing permit for a fee of \$250, it would be valid for calendar year and the captain or vessel owner would have to possess only one permit. Mrs. Kees stated the Enforcement Division had a list of administrative rules the applicants would need to follow. Commissioner Schneider asked if these regulations would have to be included as part of the law? Mr. Don Puckett stated the proposed rule could be amended to

include the permit conditions from Enforcement. Commissioner Schneider made a motion to amend the proposed rule to include the permit conditions as adopted by the Enforcement Division. Commissioner Hanchey seconded the motion and it was passed with no opposition. Then Commissioner Schneider made a motion to adopt the proposed Declaration of Emergency that included the amendment. Commissioner Hanchey seconded the motion and it was passed unanimously.

(The full text of the Declaration of Emergency and Notice of Intent is made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission are exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to their authority under R.S. 56:305.5.B. and R.S. 56:320.2.E. adopts the rule set forth below. Promulgation of this rule as a Declaration of Emergency is necessary because Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to implement the Act effective August 15, 1995. This Declaration of Emergency is effective September 1, 1995, and it shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby establish rules and regulations for the issuance of permits to persons authorized to possess gill nets, trammel nets, strike nets, and seines within the territorial boundaries of the state while traversing state waters to and from the federal exclusive economic zone, and to carry out the provisions of R.S. 320.1.

The Department of Wildlife and Fisheries is authorized to issue a Traversing Permit upon application to its Commercial License Section at the Baton Rouge office for a fee of \$250 for each permit. Application for permits must be made in person.

The Traversing Permit shall be valid for the calendar year of issue (January 1st through December 31st).

The captain or vessel owner shall only be required to have one Traversing Permit for any number of gill nets, trammel nets, strike nets, or seines. Each gear used in the waters of the federal exclusive economic zone (EEZ) shall be properly licensed. For

licensing purposes, trammel nets, strike nets, and seines are required to be licensed as gill nets when used in the EEZ.

The possession of gill nets, trammel nets, strike nets, or seines on or aboard any vessel in the saltwater areas of the state is prohibited unless the captain or owner of the vessel has in his immediate possession upon the vessel a Traversing Permit as well as any other licenses as required by law.

While traversing state waters going to and from the waters of the federal exclusive economic zone, all gill nets, trammel nets, strike nets, and seines shall remain on board the vessel and shall not be used in state waters.

Harvest and possession of all fish pursuant to this permit is subject to all rules established by the Wildlife and Fisheries Commission relative to seasons, size limits, and quotas.

Vessels containing or transporting prohibited nets shall proceed as directly, continuously, and expeditiously as possible.

Permittees will be required to abide by the following conditions:

1. Possession of a permit does not exempt the permittee from laws or regulations except for those which may be specifically exempted by the permit. Any violation of a fish law shall constitute a violation of this permit.

2. Information gained by the Department through the issuance of a Traversing Permit is not privileged and will be disseminated to the public upon request.

3. The permittee shall report monthly the catch and effort under the permit, even when catch and effort is zero. This report shall contain total catch, total effort, and any other parameters which may be required by the Department. The report shall be filed with the Enforcement Division of the Department of Wildlife and Fisheries no later than 30 days following the last day of each month.

4. When permitted gear is on board the permitted vessel or in possession of the permittee, the permittee and the vessel are assumed to be operating under authority of the permit. No gear other than gear allowed under the Traversing Permit may be on board the vessel or in possession of the permittee.

5. The vessel authorized for use under the Traversing Permit shall have distinguishing signs so that it may be identified as such. The signs shall have the letters "EEZ" and assigned numbers printed on them in at least ten-inch-high letters and numbers on a contrasting background in block style so as to be visible and

legible from low-flying aircraft and from any vessel in the immediate vicinity. The assigned numbers shall be situated on both sides and on top of the vessel.

6. The Department reserves the right to observe the operations taking place under the Traversing Permit and, at its request, the Department may assign aboard any permitted vessel an enforcement agent as an observer.

7. All permittees shall notify the Department four hours prior to leaving port to traverse or fish under the conditions of the Traversing Permit and immediately upon returning from the permitted trip. The Department shall be notified by calling a designated phone number.

8. The permittee must report to the Department the name of the buyer who will purchase the fish product obtained under the Traversing Permit. This information shall be provided at the time that permittee notifies the Department of his return.

9. When quotas have been met or seasons have been closed, no fish affected by such quotas or seasons may be possessed on board a vessel while having commercial gear on board traveling state waters.

10. Any violation of the conditions of the Traversing Permit and any violation of any fisheries regulation shall be punishable as defined by R.S. 56:320.2.D.(1) in accordance with Act 1316 of the 1995 Legislature.

Joe L. Herring
Secretary

Glynn Carver
Vice-Chairman

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission does hereby give notice of their intent to promulgate a rule to establish the rules and regulations for the issuance of Traversing Permits to persons authorized to possess gill nets, trammel nets, strike nets, and seines within the territorial boundaries of the state while traversing state waters to and from the federal exclusive economic zone.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 4. License and License Fees

§403. Traversing Permit

- The Department of Wildlife and Fisheries is authorized to issue a Traversing Permit upon application to its Commercial License Section at the Baton Rouge office for a fee of \$250 for each permit. Application for permits must be made in person.

The Traversing Permit shall be valid for the calendar year of issue (January 1st through December 31st).

The captain or vessel owner shall only be required to have one Traversing Permit for any number of gill nets, trammel nets, strike nets, or seines. Each gear used in the waters of the federal exclusive economic zone (EEZ) shall be properly licensed. For licensing purposes, trammel nets, strike nets, and seines are required to be licensed as gill nets when used in the EEZ.

The possession of gill nets, trammel nets, strike nets, or seines on or aboard any vessel in the saltwater areas of the state is prohibited unless the captain or owner of the vessel has in his immediate possession upon the vessel a Traversing Permit as well as any other licenses as required by law.

While traversing state waters going to and from the waters of the federal exclusive economic zone, all gill nets, trammel nets, strike nets, and seines shall remain on board the vessel and shall not be used in state waters.

Harvest and possession of all fish pursuant to this permit is subject to all rules established by the Wildlife and Fisheries Commission relative to seasons, size limits, and quotas.

Vessels containing or transporting prohibited nets shall proceed as directly, continuously, and expeditiously as possible.

Permittees will be required to abide by the following conditions:

1. Possession of a permit does not exempt the permittee from laws or regulations except for those which may be specifically exempted by the permit. Any violation of a fish law shall constitute a violation of this permit.

2. Information gained by the Department through the issuance of a Traversing Permit is not privileged and will be disseminated to the public upon request.

3. The permittee shall report monthly the catch and effort under the permit, even when catch and effort is zero. This report shall contain total catch, total effort, and any other parameters which may be required by the Department. The report shall be filed with the Enforcement Division of the Department of Wildlife and Fisheries no later than 30 days following the last day of each month.

4. When permitted gear is on board the permitted vessel or in possession of the permittee, the permittee and the vessel are assumed to be operating under authority of the permit. No gear other than gear allowed under the Traversing Permit may be on board the vessel or in possession of the permittee.

5. The vessel authorized for use under the Traversing Permit shall have distinguishing signs so that it may be identified as such. The signs shall have the letters "EEZ" and assigned numbers printed on them in at least ten-inch-high letters and numbers on a contrasting background in block style so as to be visible and legible from low-flying aircraft and from any vessel in the immediate vicinity. The assigned numbers shall be situated on both sides and on top of the vessel.

6. The Department reserves the right to observe the operations taking place under the Traversing Permit and, at its request, the Department may assign aboard any permitted vessel an enforcement agent as an observer.

7. All permittees shall notify the Department four hours prior to leaving port to traverse or fish under the conditions of the Traversing Permit and immediately upon returning from the permitted trip. The Department shall be notified by calling a designated phone number.

8. The permittee must report to the Department the name of the buyer who will purchase the fish product obtained under the Traversing Permit. This information shall be provided at the time that permittee notifies the Department of his return.

9. When quotas have been met or seasons have been closed, no fish affected by such quotas or seasons may be possessed on board a vessel while having commercial gear on board traveling state waters.

10. Any violation of the conditions of the Traversing Permit and any violation of any fisheries regulation shall be punishable as defined by R.S. 56:320.2.D.(1) in accordance with Act 1316 of the 1995 Legislature.

AUTHORITY NOTE: Promulgated in accordance with 56:305.B and 56:320.2.E.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22: .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments until 4:30 p.m., November 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000.

Joe L. Herring
Secretary

Glynn Carver
Vice-Chairman

Mr. Don Puckett stated the freshwater commercial gill nets and trammel nets: establishment of a marking system was a Department rule and recommended this rule be deferred.

Moving on, Mr. Harry Blanchet dealt with mullet regulations for taking; entry of commercial fisherman into the fishery. Mr. Blanchet explained this new rule modified the existing Commission rule to fall into the framework of Act 1316. These modifications included the commercial seasons, not allowing the take of mullet after sunset, before sunrise, from 5 a.m. Saturday until 6 p.m. on Sunday, only taking mullet with a mullet strike net and a provision for permits. Commissioner Schneider asked Representative Triche if he intended to amend R.S. 56:333 in the Act? Representative Triche stated the bill did amend various sections. Mr. Blanchet stated Section 333 was originally established by the 1991 Legislature and several provisions specific to harvest of mullet were included in Act 1316. Commissioner Hanchey made a motion to accept the Resolution and was seconded by Commissioner Schneider. The motion passed with no opposition.

(The full text of the Resolution, Declaration of Emergency and Notice of Intent is made a part of the record.)

RESOLUTION

RULES FOR HARVEST OF MULLET

WHEREAS, the existing rule governing the harvest of mullet was promulgated in January 1995, and

WHEREAS, Act 1316 of the 1995 Regular Legislative Session amends R.S. 56:333, thereby directing changes in the seasons, gears, and licenses and permit requirements for commercial harvest of mullet, and

WHEREAS, emergency procedures must be utilized in order to have the necessary rules in place upon the effective date of the legislation,

THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission does hereby establish emergency rules and promulgate a notice of intent to amend the published regulations concerning the harvest of mullet.

BE IT FURTHER RESOLVED, that the complete copy of the Declaration of Emergency, Notice of Intent and proposed rule are attached to and made part of this resolution.

Perry Gisclair, Chairman
La. Wildlife & Fisheries
Commission

Joe L. Herring, Secretary
La. Department of Wildlife &
Fisheries

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(25)(a), 56:326.3, and 56:333 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation Act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on September 1, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§343. Rules for Harvest of Mullet

A. Seasons

1. The season for the commercial taking of mullet shall begin at sunrise of the third Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially at any time outside of this season.

2. Commercial harvest of mullet shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of mullet during the period after sunset and before sunrise.

B. Commercial Taking

1. Mullet may only be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of one thousand two hundred feet in length or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits. The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

E. Permits

1. The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents.

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his Federal Income Tax Return including Schedule C of Federal Form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet.

4. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet.

5. Each Mullet Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of mullet taken commercially during the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

F. General Provisions. Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

G. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:325.1, 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992); amended LR 21:37 (January 1995); LR 22: .

Glynn Carver
Vice-Chairman

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule (Title 76, Part VII, Ch. 3, §343) to amend the regulations governing the commercial harvest of mullet. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included R.S. 56:6(25)(a); 56:326.3; 56:333; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§343. Rules for Harvest of Mullet

A. Seasons

1. The season for the commercial taking of mullet shall begin at sunrise of the third Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially at any time outside of this season.

2. Commercial harvest of mullet shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of mullet during the period after sunset and before sunrise.

B. Commercial Taking

1. Mullet may only be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of one thousand two hundred feet in length or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits. The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

E. Permits

1. The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents.

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet.

4. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet.

5. Each Mullet Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of mullet taken commercially during the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

F. General Provisions. Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

G. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)a), 56:325.1, 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992); amended LR 21:37 (January 1995); LR 22: .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

Glynn Carver
Vice-Chairman

Mr. Harry Blanchet took the spotted seatrout: season(s) and entry of commercial fisherman into the fishery as the next item. The first portion of this rule dealt with the commercial seasons.

A letter from Representative Triche stated there was no intent to modify the existing seasons for the harvest of spotted seatrout. Discussions occurred among the staff over season dates and as such Lt. Col. Charlie Clark addressed the Commission with Enforcement's concerns. Lt. Col. Clark stated he had a concern that the traversing permit and gill net license would allow the speckled trout season to open before the netting season would open in state waters. Vice-Chairman Carver asked if this was the intent of the bill? Representative Triche stated the intent of the bill was to give a phase out season for a two year period for netting and that there was no intention to have a year round season fishing speckled trout. After the two year phase out seasons, the fishing was to be a rod and reel industry. Lt. Col. Clark stated it was understood the seasons would start on November 20 on one year and November 18 the next year and the rod and reel gear season would occur after the May 1 closure until the million pound quota was reached. Then he stated, as far as Enforcement was concerned, November 20 would be a good date for the netting season. Commissioner Schneider asked for someone to explain when fishing could occur, with what type gear and when fishing would stop?

Mr. George Carmouche stated the Commission already had the September through April season for spotted seatrout, so in interpreting the law, the season could start in September and run through April and also implement a special mullet strike season from the November date until March. Commissioner Schneider asked if the season opened in September, would you be fishing with rod and reel only? Mr. Carmouche stated any type of legal gear could be used. Further on in the Act, Mr. Carmouche explained the two seasons of November 20 through March 1, 1996 and November 18 through March 1, 1997 and how after the closure dates occur, there would be a rod and reel season. The only certain thing with the law is the one million pound quota for spotted seatrout. Commissioner Cormier concurred with Mr. Carmouche and Lt. Col. Clark that legal gear be used during the time frame normally set and then the Secretary would determine the rod and reel season until the quota was met. Mr. Blanchet reminded the Commissioners there were two bounds already established, a million pound quota and a May 1 closure date whether the quota was met or not. In his originally proposed rule, Mr. Blanchet stated he opened the season on the third Monday in November but it was more difficult to describe a closing date. Commissioner Schneider asked which proposed rule, if any, represented the intent of Representative Triche's letter that was received by the Commission? Mr. Puckett stated the Commission's authority to set the season of September through May 1 date was not removed and it can be maintained or the dates could be modified. Included within this season was to be a special mullet strike net season for the taking of spotted seatrout, stated Mr. Puckett. After the closure of the mullet strike net season, a rod and reel would be classified as the legal gear for the taking of spotted seatrout. Commissioner Vujnovich asked if this rod and reel season was only if the quota was not

reached? Then Commissioner Vujnovich suggested setting the season to open September 15 and close when quota was met or May 1 if quota was not met. Mr. Puckett stated his interpretation of the intent of the legislature was to allow any legal gear to be used until the end of the mullet strike net season. Commissioner Schneider asked Representative Triche if this was the intent of the legislature? Representative Triche read from the proposed rule submitted to the Commissioners at the August 9th meeting. He stated he never envisioned fishing spotted seatrout for a full year with the one million pound quota. He further stated the intent of the bill was to allow for two close out seasons for the taking of spotted seatrout with a strike net. The implementation of a commercial harvest of spotted seatrout was to occur from the third Monday in November and continue until March 1 within the Commission's parameter. At this point, Representative Triche read from his letter sent to the Commissioners. He commented he agreed with the Enforcement Division in trying to include the provisions of enforcing the law. Lt. Col. Clark asked if the Commission stayed with the September opening date, would rod and reel be allowed from September 15 until November 20 for the harvesting of spotted seatrout? Commissioner Cormier asked if these dates were enforceable?

Mr. George Carmouche stated you have to look at the law, and legislative intent was rarely used except in the courts. He further stated the Commission has the authority to set seasons and if the season was set for September, any legal gear could be used at least through the first mullet strike season. Only after the second season closed would the rod and reel be required. Lt. Col. Clark stated the perfect law enforcement clarification would be to open the season on November 20 and run through April 30 and then if the quota has not been met, have the commercial rod and reel season. Commissioner Vujnovich asked if Lt. Col. Clark was recommending opening the season on November 20. Commissioner Schneider asked if Enforcement wanted both seasons to open at the same time? Mr. Blanchet stated the change in opening dates could be modified in the proposed rule and the season would close on May 1 whether the quota has been reached or not. Commissioner Vujnovich asked if the mullet strike net and the spotted seatrout strike net were one and the same net? Mr. Blanchet felt the intent of the law was to have a very specific time that a fisherman could have spotted seatrout on board that was taken with mullet strike nets. Commissioner Vujnovich asked if the mullet strike net could only be used for 90 days to harvest spotted seatrout? Mr. Blanchet answered yes. Vice-Chairman Carver asked for the pleasure of the Commission. Commissioner Cormier made a motion to accept the time frame according to Commissioner Schneider and Lt. Col. Clark and if the quota is not met, allow the rod and reel fishery. Mr. Blanchet explained the season would begin at sunrise on the third Monday in November of each year and close on March 1 for the mullet strike net season, then allow the use of the rod and reel fishery until

May 1 or the one million pound quota was met. Commissioner Schneider seconded the motion and it passed with no opposition.

Mr. Blanchet then explained the remainder of the proposed rule such as no harvesting at night, continuing the quota, a permit system, proof of income, and reporting requirements. Commissioner Schneider asked if the buyer and seller could both be required to report their catches? While Mr. Blanchet continued his review, Commissioner Schneider asked what was meant by "all legal gear"? Then he asked if this gear included gill nets? Representative Triche explained strike net was defined to mean any gill net, trammel net or seine net not anchored or secured to the waterbottom. The legislators wanted to remove gill nets completely in order to outlaw the gill nets and went with the term mullet strike net. The major difference between a gill net and mullet strike net is a strike net has to be actively worked, it can not be set and left unattended. A paragraph in the proposed rule would be deleted due to the change in opening dates, stated Mr. Blanchet. Vice-Chairman Carver asked if there was a need for a motion to delete the paragraph? Mr. Puckett suggested a motion was needed first to delete the paragraph Mr. Blanchet referred to and then a motion to adopt the Declaration of Emergency and Notice of Intent. Commissioner Cormier made a motion to delete the referenced paragraph as recommended. Commissioner Schneider seconded the motion and it passed with no opposition. Then Commissioner Hanchey made a motion to adopt the Declaration of Emergency and Notice of Intent. Again Commissioner Schneider seconded the motion and it passed unanimously.

(The full text of the Resolution, Declaration of Emergency and Notice of Intent is made a part of the record.)

RESOLUTION

RULES FOR HARVEST OF SPOTTED SEATROUT

WHEREAS, the existing rule governing the harvest of spotted seatrout was promulgated in February 1992, and

WHEREAS, Act 1316 of the 1995 Regular Legislative Session amends R.S. 56:325.3, thereby directing changes in the seasons, gears, and licenses and permit requirements for commercial harvest of spotted seatrout, and

WHEREAS, emergency procedures must be utilized in order to have the necessary rules in place upon the effective date of the legislation,

THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission does hereby establish emergency rules and

promulgate a notice of intent to amend the published regulations concerning the harvest of spotted seatrout.

BE IT FURTHER RESOLVED, that the complete copy of the Declaration of Emergency, Notice of Intent and proposed rule are attached to and made part of this resolution.

Perry Gisclair, Chairman
La. Wildlife & Fisheries
Commission

Joe L. Herring, Secretary
La. Department of Wildlife &
Fisheries

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(10), 56:6(25)(a), 56:325.3, 56:326.3, and 56:325.3 as amended by Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation Act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on September 1, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§341. Spotted Seatrout Management Measures

A. Commercial Season; Quota; Permits

1. The season for the commercial taking of spotted seatrout shall begin at sunrise on the third Monday in November of each year, and close at sunset on May 1 the following year or when the quota has been reached or on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever occurs first.

2. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial quota for spotted seatrout shall be one million pounds for each fishing season.

4. Permits

a. The commercial taking of spotted seatrout is prohibited except by special non-transferable Spotted Seatrout Permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents.

b. No person shall be issued a license or permit for the commercial taking of spotted seatrout unless that person meets all of the following requirements:

i. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

ii. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his Federal Income Tax Return including Schedule C of Federal Form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

iii. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

iv. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

c. No person shall receive more than one permit or license to commercially take spotted seatrout.

d. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take spotted seatrout and shall be forever barred from receiving any permit or license to commercially take spotted seatrout.

5. Each Spotted Seatrout Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of spotted seatrout taken commercially during the preceding month, and the commercial dealers to whom these were sold, if sold. Monthly reports shall be filed, even if catch or effort is zero.

B. Commercial Taking of Spotted Seatrout Using Mullet Strike Nets, Seasons

1. There shall be two seasons for the commercial harvest of spotted seatrout with a mullet strike net: the first season shall open on Monday, November 20, 1995, and end no later than March 1, 1996; the second season shall open on Monday, November 18, 1996, and end no later than March 1, 1997. Such seasons shall be closed prior to the dates listed in this paragraph if (a) one million pounds of spotted seatrout have been taken commercially during a fishing season, or (b) on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever occurs first. The closure shall not take effect for at least 72 hours after notice to the public.

2. During these two seasons the commercial harvest of spotted seatrout with mullet strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial taking of spotted seatrout by using a mullet strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one mullet strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take spotted seatrout. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Taking of Spotted Seatrout Using Other Commercial Gear

1. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

2. During the 1995-1996 season for harvest of spotted seatrout with a mullet strike net, all other legal methods of harvest may also be used until March 1, 1996. After that date, only commercial rod and reel may be used for the commercial harvest

of spotted seatrout, provided that the commercial harvest of spotted seatrout does not exceed the commercial quota.

3. During the 1996-1997 season for commercial harvest of spotted seatrout with a mullet strike net, only a mullet strike net or a commercial rod and reel may be used for the commercial harvest of spotted seatrout provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

4. Following the closure of the 1996-1997 season for the harvest of spotted seatrout with a mullet strike net, only a commercial rod and reel shall be used for the commercial harvest of spotted seatrout, provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

D. General Provisions. Effective with the closure of the commercial season for spotted seatrout, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of spotted seatrout on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of spotted seatrout legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

AUTHORITY NOTE: Promulgated in accordance with Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a); 56:325.3; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992); amended LR 22: .

Glynn Carver
Vice-Chairman

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule (Title 76, Part VII, Ch. 3, §341) to amend the regulations governing the commercial harvest of spotted seatrout. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included in Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a); 56:325.3; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§341. Spotted Seatrout Management Measures

A. Commercial Season; Quota; Permits

1. The season for the commercial taking of spotted seatrout shall begin at sunrise on the third Monday in November of each year, and close at sunset on May 1 the following year or when the quota has been reached or on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever occurs first.

2. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial quota for spotted seatrout shall be one million pounds for each fishing season.

4. Permits

a. The commercial taking of spotted seatrout is prohibited except by special non-transferable Spotted Seatrout Permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents.

b. No person shall be issued a license or permit for the commercial taking of spotted seatrout unless that person meets all of the following requirements:

i. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

ii. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect

which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

iii. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

iv. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

c. No person shall receive more than one permit or license to commercially take spotted seatrout.

d. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take spotted seatrout and shall be forever barred from receiving any permit or license to commercially take spotted seatrout.

5. Each Spotted Seatrout Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of spotted seatrout taken commercially during the preceding month, and the commercial dealers to whom these were sold, if sold. Monthly reports shall be filed, even if catch or effort is zero.

B. Commercial Taking of Spotted Seatrout Using Mullet Strike Nets, Seasons

1. There shall be two seasons for the commercial harvest of spotted seatrout with a mullet strike net: the first season shall open on Monday, November 20, 1995, and end no later than March 1, 1996; the second season shall open on Monday, November 18, 1996, and end no later than March 1, 1997. Such seasons shall be closed prior to the dates listed in this paragraph if (a) one million pounds of spotted seatrout have been taken commercially during a fishing season, or (b) on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever occurs first. The closure shall not take effect for at least 72 hours after notice to the public.

2. During these two seasons the commercial harvest of spotted seatrout with mullet strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial taking of spotted seatrout by using a mullet strike net in excess of one thousand two hundred feet in

length is prohibited. Furthermore, use of more than one mullet strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take spotted seatrout. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Taking of Spotted Seatrout Using Other Commercial Gear

1. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

2. During the 1995-1996 season for harvest of spotted seatrout with a mullet strike net, all other legal methods of harvest may also be used until March 1, 1996. After that date, only commercial rod and reel may be used for the commercial harvest of spotted seatrout, provided that the commercial harvest of spotted seatrout does not exceed the commercial quota.

3. During the 1996-1997 season for commercial harvest of spotted seatrout with a mullet strike net, only a mullet strike net or a commercial rod and reel may be used for the commercial harvest of spotted seatrout provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

4. Following the closure of the 1996-1997 season for the harvest of spotted seatrout with a mullet strike net, only a commercial rod and reel shall be used for the commercial harvest of spotted seatrout, provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

D. General Provisions. Effective with the closure of the commercial season for spotted seatrout, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of spotted seatrout on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of spotted seatrout legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

AUTHORITY NOTE: Promulgated in accordance with Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a); 56:325.3; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992); amended LR 22: .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

Glynn Carver
Vice-Chairman

Mr. Harry Blanchet also handled the black drum, sheepshead and flounder: regulations for the entry of commercial fisherman into the fishery. These regulations established a net permit, named Drum, Sheepshead Strike Net Permit, required of fishermen to commercially take black drum, sheepshead and flounder with a pompano strike net. These species can only be taken with the pompano strike net and other legal means. The intent was to have a set of rules for the harvest of these three species with pompano strike nets. The different sections of the proposed rule were explained by Mr. Blanchet. Commissioner Babin asked if this clarified Chairman Gisclair's question from the last meeting on net trawls with the new Drum, Sheepshead Strike Net Permit? Mr. Blanchet answered yes. Commissioner Schneider made a motion to accept the Declaration of Emergency and Notice of Intent. Commissioner Babin seconded the motion and it passed with no opposition.

(The full text of the Resolution, Declaration of Emergency and Notice of Intent is made a part of the record.)

RESOLUTION

RULES FOR HARVEST OF BLACK DRUM, SHEEPSHEAD AND FLOUNDER WITH POMPANO STRIKE NETS

WHEREAS, Act 1316 of the 1995 Regular Legislative Session enacts R.S.56:325.4, thereby directing changes in the seasons, gears, and licenses and permit requirements for commercial harvest of black drum, sheepshead and

flounder, and other species of saltwater finfish, other than spotted seatrout, red drum, and mullet, and

WHEREAS, emergency procedures must be utilized in order to have the necessary rules in place upon the effective date of the legislation,

THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission does hereby establish emergency rules and promulgate a notice of intent to establish permanent regulations concerning the harvest of black drum, sheepshead and flounder with pompano strike nets

BE IT FURTHER RESOLVED, that the complete copy of the Declaration of Emergency, Notice of Intent and proposed rule are attached to and made part of this resolution.

Perry Gisclair, Chairman
La. Wildlife & Fisheries
Commission

Joe L. Herring, Secretary
La. Department of Wildlife &
Fisheries

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(10), 56:6(25)(a), 56:326.1, 56:326.3, and 56:325.4 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation Act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on September 1, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Wildlife and Fisheries Commission herein establishes rule and regulations governing the harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§349. Rules for Harvest of Black Drum, Sheepshead, Flounder and Other Saltwater Species using Pompano Strike Nets

A. Drum/Sheepshead Strike Net Permit

1. The commercial taking of black drum, sheepshead and flounder with pompano strike nets is prohibited except by special permit issued by the Department of Wildlife and Fisheries, hereby designated as a Drum/Sheepshead Strike Net Permit. This permit is required in addition to the Pompano Strike Net License required by law.

2. No person shall be issued a Drum/Sheepshead Strike Net Permit unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his Federal Income Tax Return including Schedule C of Federal Form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

d. The applicant shall not have been convicted of any fishery-related violations that constitutes a class three or greater violation.

3. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any Drum/Sheepshead Strike Net Permit and shall be forever barred from receiving any such permit in the future.

B. Commercial Taking of Saltwater Finfish using Pompano Strike Nets

1. There shall be two seasons for the commercial harvest of all species of saltwater finfish (other than mullet, spotted seatrout and red drum) with a pompano strike net: the first season shall open on Monday October 16, 1995, and end with the closure of the mullet strike net season, but no later than March 1, 1996; the second season shall open on Monday October 21, 1996, and end with the closure of the mullet strike net season, but no later than March 1, 1997. A season for the taking of these species shall be closed prior to the dates listed in this paragraph if the commercial quota for that species has been taken, or on the date projected by the staff of the Department of Wildlife and Fisheries that a quota will be reached, whichever occurs first. The closure shall not take effect for at least 72 hours after notice to public.

2. During these two seasons the commercial harvest of these species with pompano strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of these species with pompano strike nets during the period after sunset and before sunrise.

3. The commercial taking of these species by using a pompano strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one pompano strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the Drum/Sheepshead Strike Net Permit number, if applicable. The department shall not issue any tag to a person who does not have a social security number.

5. Each Drum/Sheepshead Strike Net Permit holder shall on or before the tenth of each month file a return to the department on forms provided or approved for the purpose, the pounds of black drum from 16 to 27 inches, the number of black drum over 27 inches, the pounds of sheepshead and the pounds of flounder taken commercially during the preceding month, the gears used for harvest, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

C. General Provisions. Effective with the closure of a commercial season for black drum, sheepshead, or flounder, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of that species on the waters of the state with pompano strike nets in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of fish legally taken during any open period provided that those who are required to do so shall maintain appropriate records in

accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:698 (August 1990); amended LR 22: .

Glynn Carver
Vice-Chairman

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule (Title 76, Part VII, Ch. 3, §349) to establish regulations governing the commercial harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included in R.S. 56:6(10); 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§349. Rules for Harvest of Black Drum, Sheepshead, Flounder and Other Saltwater Species using Pompano Strike Nets

A. Drum/Sheepshead Strike Net Permit

1. The commercial taking of black drum, sheepshead and flounder with pompano strike nets is prohibited except by special permit issued by the Department of Wildlife and Fisheries, hereby designated as a Drum/Sheepshead Strike Net Permit. This permit is required in addition to the Pompano Strike Net License required by law.

2. No person shall be issued a Drum/Sheepshead Strike Net Permit unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

d. The applicant shall not have been convicted of any fishery-related violations that constitutes a class three or greater violation.

3. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any Drum/Sheepshead Strike Net Permit and shall be forever barred from receiving any such permit in the future.

B. Commercial Taking of Saltwater Finfish using Pompano Strike Nets

1. There shall be two seasons for the commercial harvest of all species of saltwater finfish (other than mullet, spotted seatrout and red drum) with a pompano strike net: the first season shall open on Monday October 16, 1995, and end with the closure of the mullet strike net season, but no later than March 1, 1996; the second season shall open on Monday October 21, 1996, and end with the closure of the mullet strike net season, but no later than March 1, 1997. A season for the taking of these species shall be closed prior to the dates listed in this paragraph if the commercial quota for that species has been taken, or on the date projected by the staff of the Department of Wildlife and Fisheries that a quota will be reached, whichever occurs first. The closure shall not take effect for at least 72 hours after notice to public.

2. During these two seasons the commercial harvest of these species with pompano strike nets shall not be allowed during

the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of these species with pompano strike nets during the period after sunset and before sunrise.

3. The commercial taking of these species by using a pompano strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one pompano strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the Drum/Sheepshead Strike Net Permit number, if applicable. The department shall not issue any tag to a person who does not have a social security number.

5. Each Drum/Sheepshead Strike Net Permit holder shall on or before the tenth of each month file a return to the department on forms provided or approved for the purpose, the pounds of black drum from 16 to 27 inches, the number of black drum over 27 inches, the pounds of sheepshead and the pounds of flounder taken commercially during the preceding month, the gears used for harvest, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

C. General Provisions. Effective with the closure of a commercial season for black drum, sheepshead, or flounder, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of that species on the waters of the state with pompano strike nets in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of fish legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

AUTHORITY NOTE: Promulgated in accordance with 56:6(10), 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:698 (August 1990); amended LR 22: .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

Glynn Carver
Vice-Chairman

Mr. Don Puckett stated Mr. Bennie Fontenot had the final proposed rule and was presented for information only since the rule would be promulgated by the Secretary. Mr. Fontenot stated the proposed rule was a repeat of an established saltwater rule with the word saltwater replaced with freshwater. He also reminded the Commission the Department would promulgate this rule.

(The full text of the Declaration of
Emergency and Notice of Intent is
made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Office of Fisheries

The Department of Wildlife and Fisheries is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:320(F), adopts the rule set forth below.

Each gill net or trammel net used to take freshwater commercial fish shall be marked with a waterproof tag attached to the corkline at each end of the net, no more than three feet from the edge of the webbing. Said tags shall be supplied by the commercial fisherman and shall be completely waterproof. Each tag shall have the fisherman's full name (no initials) and commercial fisherman's license number (not the net license number) printed thereon in the English language, so as to be clearly legible.

This Declaration of Emergency is necessary because Act 1316 of the 1995 Legislature mandates the Department of Wildlife and Fisheries to adopt this rule. The effective date of Act 1316 is August 15, 1995, and the effective date of the Declaration of Emergency shall be September 1, 1995. It shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Joe L. Herring
Secretary

NOTICE OF INTENT

Department of Wildlife and Fisheries

Office of Fisheries

The Secretary of the Department of Wildlife and Fisheries hereby advertises his intent to adopt a rule for marking gill and trammel nets used to take freshwater commercial fish.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 1. Freshwater Sport and Commercial Fishing

§181. Marking System for Freshwater Gill Nets and Trammel Nets

Each gill net or trammel net used to take freshwater commercial fish shall be marked with a waterproof tag attached to the corkline at each end of the net, no more than three feet from the edge of the webbing. Said tags shall be supplied by the commercial fisherman and shall be completely waterproof. Each tag shall have the fisherman's full name (no initials) and commercial fisherman's license number (not the net license number) printed thereon in the English language, so as to be clearly legible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:320(F).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Fisheries, LR 21: .

Interested persons may submit written comments on the rule to Mr. Bennie Fontenot, Jr., Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Friday, November 10, 1995.

Joe L. Herring
Secretary

Mr. Pete Gerica stated the majority of the fish caught such as mullet and trout are caught at night. But then he asked Enforcement, if he was riding with a gill net in the boat, how would it be determined what net he has? Lt. Col. Clark stated whatever a fisherman bought a license for is what the net would be called. Discussion between Mr. Gerica and Lt. Col. Clark continued on the different gear and traveling by boat through the different types of waterbodies.

After concluding the discussion on Act 1316, Vice-Chairman Carver asked for the Secretary's Report to the Commission. Secretary Herring stated Senator Breau has helped provide approximately \$15 million to the gulf states for fishery work in the Gulf of Mexico. Louisiana's plan is to use their share for

habitat work and that would be good for fisheries. Mr. Corky Perret would be meeting with the different gulf states to work out some management plans.

The Department has received several calls from charter boat owners from Louisiana and Mississippi on the new license required. The Mississippi owners were complaining about the \$1,000 non-resident fee.

Finally, Secretary Herring thanked the staff for working on Act 1316 and the time they took trying to solve a complicated issue in order for it to work.

Vice-Chairman Carver then asked for **Public Comments**. Mr. Paul Baier, attorney for the commercial fishermen, stated he wanted the Commission to realize they were not there to do battle. He then explained about the Department and Commission being named in the lawsuit.

There being no further business, Commissioner Schneider made a motion to Adjourn the meeting.



Joe L. Herring
Secretary

JLH:sch

MINUTES OF THE MEETING
OF

LOUISIANA WILDLIFE AND FISHERIES COMMISSION

Tuesday, August 15, 1995

Vice-Chairman Glynn Carver presiding.

Peter Vujnovich
Jerald Hanchey
Joseph B. Cormier
Jeff Schneider
Daniel Babin

Chairman Perry Gisclair was absent from the meeting.

Secretary Joe L. Herring was also present.

preventing
Vice-Chairman Carver began the meeting stating the Commission needed to implement Act 1316, the Louisiana Marine Resources Conservation Act of 1995. He then asked Mr. Don Puckett for an update on this Act. Mr. Puckett stated a hearing was held on Monday, August 14, 1995 with Judge Clark concerning an injunctive suit over Act 1316. A Temporary Restraining Order was issued by the Judge ~~from~~ enforcing the provisions of the Act. A hearing on the Preliminary Injunction has been scheduled for August 31, 1995 to determine if the injunction enjoining the enforcement of Act 1316 would occur. Continuing on, Mr. Puckett reminded the Commissioners of rules to be promulgated by the Department and Commission and this meeting was being held to review those proposed rules. Mr. Puckett asked Judge Clark if she had problems with the Commission proceeding to promulgate rules with the idea the law would eventually take effect. According to Mr. Puckett, Judge Clark was aware of the Meeting and that rules would be submitted for approval knowing they would not be in effect until Act 1316 was allowed to take effect. With the hearing being held on August 31, 1995, all of the Declarations of Emergency would have an effective date of September 1, 1995 assuming the Department was successful.

Mr. Puckett then suggested the Commission take action on Declaration(s) of Emergency and Notice(s) of Intent to Implement Act 1316, the Louisiana Marine Resources Conservation Act of 1995, including but not limited to, regulations governing: commercial fisherman's assistance program: proof of income and eligibility; schedule of payments for nets; rod and reel commercial gear license: procedures for proof of income and eligibility; gill nets, trammel nets, strike nets and seines; traverse permit to EEZ; freshwater commercial gill nets and trammel nets: establishment of a marking system; Federal Exclusive Economic Zones (EEZ) regulation governing possession of gill nets, trammel nets, strike nets or seines; permits, regulation and enforcement; spotted seatrout:

Draft
Corrections made
9/22/95 - sch

season(s) and entry of commercial fisherman into the fishery; black drum, sheepshead and flounder: regulations for the entry of commercial fisherman into the fishery; and mullet: regulations for taking; entry of commercial fisherman into the fishery.

Mrs. Wynnette Kees began her first section on **commercial fisherman's assistance program: proof of income and eligibility** by reading from the Act. This stated an applicant shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in two of the three years from 1993 to 1995. Proof of this shall be in the form of a Federal Tax Return and Schedule C. When the tax return does not show proof, the applicant can provide a CPA certified audited return. The Department was still puzzled over the term "earned income". Mr. Fred Prejean stated the Department has come up with a definition of earned income. The definition is: Earned income shall be income, wages, salaries, professional fees, that result from the personal labor or services of an individual. Corporations and partnerships would be reviewed on an individual basis. Mr. Prejean then explained several examples of what would be considered earned income. Mrs. Kees stated the applicants should apply by October 1, and if an applicant has to use 1995 for proof of income, then his application would be held until next year. Commissioner Schneider stated Representative Triche was at the meeting and asked that a copy of the rules be provided to him. Vice-Chairman Carver hoped the meeting would answer questions and could provide the intent of the law. Commissioner Cormier asked if a vote would be taken on each Declaration of Emergency? Mr. Puckett stated each regulation was to be presented as a Declaration of Emergency and Notice of Intent and only one motion would be required for approval. Hearing no further discussion, Commissioner Cormier made a motion to accept the Proof of Income and was seconded by Commissioner Babin. The motion passed with no opposition. *certified*

(The full text of the Declaration of
Emergency and Notice of Intent is
made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:13.1.B.(1) adopts the rule set forth below. Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to provide economic assistance to those commercial fishermen who are displaced or severely financially impacted by the loss of the use of commercial fishing nets due to its enactment. Initial promulgation of this rule as a Declaration

of Emergency is necessary because the Act establishes a deadline for implementation which predates the earliest date for promulgation of a final rule through non-emergency rule-making procedures. This Declaration of Emergency shall be effective on September 1, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Wildlife and Fisheries Commission herein establishes procedures for determining proof of income of applicants for economic assistance under R.S. 56:13.1.

An applicant for economic assistance shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the years 1995, 1994, and 1993.

Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

Glynn Carver
Vice-Chairman

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate a rule to establish the procedures for determining proof of income of applicants for economic assistance under the Commercial Fisherman's Assistance Program established by the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

Title 76

WILDLIFE AND FISHERIES

Part XVII. Commercial Fisherman's Assistance Program

Chapter 1. Proof of Income

§101. Criteria for Establishing Proof of Income and Procedures

An applicant for economic assistance shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the years 1995, 1994, and 1993.

Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:13.1.B(1).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22: .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments until 4:30 p.m., November 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000.

Glynn Carver
Vice-Chairman

ARE Mrs. Wynnette Kees presented the **schedule of payments for nets**. These nets would be purchased from qualified persons those ~~nets~~ rendered illegal or useless because of Act 1316. The proof of income was established as in the previous section. Also several *being* criteria needed to be met such as buying of a saltwater gill net license, not convicted of any fishery related offense that is a Class 3 or greater violation, and ~~must~~ have been a bonafide *HAVING*

resident on June 30, 1995. The Department would provide a form for the applicants to show they meet all the criteria. The applicant would be notified by mail when the Department would review his application and physically see and evaluate the nets. Mr. Fred Prejean stated the net buy back portion of the Act would end January 1, 1996. Since the source of the revenue to buy back the nets, a \$3 stamp, would not be available until November and in keeping with the intent of the Act, the staff moved the January 1 *end-date* back to June 30, 1996. Referring to a question from Chairman Gisclair at the last meeting, Mr. Prejean stated the economist was available to answer any questions on how the prices were determined. Commissioner Babin asked how ~~does~~ the Legal staff ~~feel~~ *felt* about moving the date back? Mr. Prejean stated the Legal staff was in support of moving the date. Commissioner Vujnovich asked why did not the legislature allow money be given to the displaced fishermen to feed their families while the fishermen were training for another job. Commissioner Schneider asked if the fishermen can show proof of income, would they qualify for all of the programs and not just be limited to one section?

Mr. George Carmouche, representing Senator Nunez, asked if everyone that owned a recreational license had to buy the \$3 stamp? He felt if there was the flexibility to move the dates in the rule, there may the ability to require everyone that has to buy the \$3 stamp to do so by a certain date in order to keep their license valid for this year. Discussion continued between Mr. Prejean and Mr. Carmouche on the funding for the program.

Mr. Pete Gerica, Lake Pontchartrain Fisherman's Association, stated there are more people that fish ~~fish~~ with more than just gill nets and that none of these people would be entitled to the compensation. He then stated he has nets that range from \$700 per net to \$3,000 per net and the schedule for payment does not come close to compensating the fishermen. Then he asked who would pay his bills while he is being trained for another profession?

Noted Commissioner Schneider stated the bill states how 70 percent of the revenue would be used, but asked how would the other 30 percent be used after June 1996? Mrs. Kees stated the Act specifies 30 percent off the top goes to Enforcement for both years. Mr. Brian McManus stated there were many factors to consider in the price of the net. He also stated he contacted six different net dealers to send a copy of their catalog or fax a price list for the different types of nets. He then took an average from the prices and these averages do not include the different options, sales tax, shipping or handling charges. Then considering the fact the nets are used, the staff took one-half of the new price and came up with the schedule. Commissioner Vujnovich explained how he bought a net just to move black drum from his oyster beds and the cost of the net he had to buy. Then he asked if the oyster fishermen could be compensated under this program also. He then concluded stating lifestyles in Louisiana

would change in the next five years and not for the better. Commissioner Babin asked if shrimp trawls were to be included in the net buy-back schedule and thought they were not to be impacted by the law. Vice-Chairman Carver asked if this rule was to be promulgated by Department administrators? Mr. Puckett advised it was a Department rule that was put on the agenda for information only. Vice-Chairman Carver then asked if anyone knew the amount of money that would be collected with buying the stamps; had anyone projected what the buy-back on the nets would be; and would the amount of disbursement of funds be dependent upon the stamps. Commissioner Babin asked what would happen if the nets purchased exceeded the amount collected and what would happen to the rest of the money that may exceed the stamp sales? Then Commissioner Babin asked Representative Warren Triche if the legislators thought how the Department could enforce a law and buy back nets when money was not available. *sale of*

Representative Warren Triche began stating Act 1316 is law and the rules adopted by the Commission should conform to the Act. He also reminded the Commission the Judge did not have a problem with the Commission implementing and promulgating the rules for the adoption of the law. Then he asked Secretary Herring why has it taken so long for the Department to call him to answer questions pertaining to the bill? Secretary Herring stated the staff has met on the bill since its passage and a lot of problems have been solved. He apologized to Mr. Triche for not contacting him and further stated the Department has not tried to delay or hinder the bill. Representative Triche still felt the Department did delay the implementation of the bill. Again he asked Secretary Herring why he did not call him and why were these rules being promulgated as emergency rules? Secretary Herring stated normally the staff works out new rules by themselves. Representative Triche explained to Commissioner Vujnovich the bill does not affect oyster fishermen, crabbers, fishermen or shrimpers and that the fishermen can use one strike net. Then he stated no one gives a full price value for a product that has been used. The whole problem, stated Representative Triche, was that there were too many nets in the waters right now. He concluded stating the different variables can not be made by staff, Commission or Legislature. Commissioner Vujnovich asked if the nets to capture black drum would be allowed for the duration of the bill or just one year? Representative Triche stated that after the two years using the strike nets, the fishermen would go to a rod and reel fishery.

Mr. Peter Hotaph commented the shrimpers would be affected by the bill because these fishermen survive the winters by fishing for sheepshead and drum fish. Also the oyster fishermen would be affected because of the drum fishery. Then he asked how does he qualify for these assistance program being disabled for two of the three years listed?

Senator Samuel Nunez stated the Governor should have vetoed this bill and the interpretations of the bill should be done by the Commission. He then stated the bills interpretation and language would eventually be settled by the courts. Senator Nunez told the Commissioner's their job was very difficult and asked them to do the best job possible and make the bill work. He then expressed his appreciation for the efforts put on interpreting the bill that would benefit the users. Commissioner Schneider thanked both legislators for their comments and stated his job was to put what was passed into rules and regulations. Vice-Chairman Carver concurred with Commissioner Schneider and stated the Commission was going to implement the bill that passed. With this rule being handled by the Secretary, there was no need for a vote.

(The full text of the Declaration of
Emergency and Notice of Intent is
made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Office of Management and Finance

The Department of Wildlife and Fisheries is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:13.1.D. adopts the rule set forth below. This Declaration of Emergency is necessary because Act 1316 of the 1995 Legislature mandates the Department of Wildlife and Fisheries to adopt this rule no later than September 1, 1995, which is the effective date of this Declaration of Emergency. It shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Until January 1, 1996, the Department of Wildlife and Fisheries shall purchase from qualified persons those commercial fishing nets that have been rendered illegal or useless due to the enactment of the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

In order to qualify, persons must have applied for assistance under the Commercial Fisherman's Assistance Program on or before October 1, 1995, and must have met all of the following criteria: 1) must have purchased a saltwater gill net license in at least two of the years 1995, 1994, and 1993; 2) during two of those years shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species; 3) shall not have been convicted of any fishery-related offense that constitutes a class three or greater violation; and 4) must have been a bona fide resident of Louisiana on June 30, 1995.

Proof of income shall be provided by the applicant in the form of a copy of his federal tax return, including Schedule C of

federal form 1040, which has been certified by the Internal Revenue Service. The Department of Wildlife and Fisheries can provide the applicant with the appropriate Internal Revenue Service form to request this. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

Beginning September 1, 1995, qualified persons desiring to have their nets purchased by the Department of Wildlife and Fisheries may obtain an application form provided by the department from any departmental district office; the completed form shall include all information necessary to assist in the determination of the eligibility status of the applicant. All requested information regarding size, type and number of nets must be provided. The completed form, along with proof of income as described herein, a copy of the applicants Louisiana driver's license, and copies of appropriate saltwater gill net licenses, shall be submitted no later than October 1, 1995, to the Commercial License Section of Wildlife and Fisheries located at 2000 Quail Drive, Baton Rouge, LA or by mail to P. O. Box 98000, Baton Rouge, LA 70898. Applicants will be notified by mail as to the disposition of their application.

Only those nets that were legal for use in the saltwater areas of this state on June 1, 1995, and only those nets in usable condition, will be eligible for purchase under the provisions of Act 1316 and this Declaration of Emergency.

Applicants must have had a gear license issued in their name for at least one of the years 1995, 1994, or 1993, for the specific type of net(s) being presented for purchase. This is in addition to the requirements for having a saltwater gill net license for two of the three years.

Monetary reimbursement for nets to be purchased under this Declaration of Emergency shall be determined based on the availability of funds collected from the issuance of the Louisiana Marine Resources Conservation Act Stamp. Funds collected through June 30, 1996, will be distributed as follows: 30 percent to the Enforcement Division of the Department in accordance with the Act, and the remaining 70 percent to be made available for the net buy-back portion of the Commercial Fisherman's Assistance Program. Subsequent to June 1996, 70 percent of the revenue collected from the LMRC Stamp will be used for the remainder of the Commercial

Fisherman's Assistance Program as defined in Act 1316, R.S. 56:13.1.C.

The disbursement of available funds for nets shall be calculated on a pro rata basis to accommodate the number of qualified applicants at a rate not to exceed 50 percent of the average cost of each qualifying net. The following is a schedule of the maximum amount to be paid for each type and size of net based upon 50 percent of the average standard 1995 catalog prices not including sales tax, shipping charges, or options. Actual prices to be paid will be limited by the number of qualifying nets and by the amount of revenue collected.

<u>Mesh Depth</u>	<u>Gill Nets</u>	<u>Seines</u>
	<u>Price per foot</u>	<u>Price per foot</u>
4' - 6'	\$.25	\$.76
over 6' - 8'	\$.30	\$.80
over 8' - 10'	\$.38	\$.87
over 10' - 12'	\$.42	\$.92
over 12' - 14'	\$.44	\$.96
over 14'	\$.53	\$ 1.02

	<u>Trammel Nets</u>
	<u>Price per foot</u>
4' - 6'	\$.38
over 6' - 8'	\$.40
over 8' - 10'	\$.43
over 10'	\$.45

	<u>Fish Trawls</u>
Complete	\$ 11.22 per foot of trawl width
Trawl only	\$ 6.84 per foot of trawl width

Joe L. Herring
Secretary

NOTICE OF INTENT

Department of Wildlife and Fisheries
Office of Management and Finance

The Department of Wildlife and Fisheries does hereby give notice of its intent to promulgate a rule to establish a schedule showing the amount to be paid for each type and size of net to be purchased under the Net Buy-Back Program portion of the Commercial Fisherman's Economic Assistance Program and to establish procedures for application. This is in accordance with the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

Title 76

WILDLIFE AND FISHERIES

Part XVII. Commercial Fisherman's Assistance Program

Chapter 3. Net Buy-Back Program

§301. Criteria for Qualification; Procedures

Until January 1, 1996, the Department of Wildlife and Fisheries shall purchase from qualified persons those commercial fishing nets that have been rendered illegal or useless due to the enactment of the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

In order to qualify, persons must have applied for assistance under the Commercial Fisherman's Assistance Program on or before October 1, 1995, and must have met all of the following criteria: 1) must have purchased a saltwater gill net license in at least two of the years 1995, 1994, and 1993; 2) during two of those years shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species; 3) shall not have been convicted of any fishery-related offense that constitutes a class three or greater violation; and 4) must have been a bona fide resident of Louisiana on June 30, 1995.

Proof of income shall be provided by the applicant in the form of a copy of his federal tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. The Department of Wildlife and Fisheries can provide the applicant with the appropriate Internal Revenue Service form to request this. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

Beginning September 1, 1995, qualified persons desiring to have their nets purchased by the Department of Wildlife and Fisheries may obtain an application form provided by the department from any departmental district office; the completed form shall include all information necessary to assist in the determination of the eligibility status of the applicant. All requested information regarding size, type and number of nets must be provided. The completed form, along with proof of income as described herein, a copy of the applicants Louisiana driver's license, and copies of appropriate saltwater gill net licenses, shall be submitted no later than October 1, 1995, to the Commercial License Section of Wildlife and Fisheries located at 2000 Quail Drive, Baton Rouge, LA

or by mail to P. O. Box 98000, Baton Rouge, LA 70898. Applicants will be notified by mail as to the disposition of their application.

Only those nets that were legal for use in the saltwater areas of this state on June 1, 1995, and only those nets in usable condition, will be eligible for purchase under the provisions of Act 1316.

Applicants must have had a gear license issued in their name for at least one of the years 1995, 1994, or 1993, for the specific type of net(s) being presented for purchase. This is in addition to the requirements for having a saltwater gill net license for two of the three years.

Monetary reimbursement for nets to be purchased under this Rule shall be determined based on the availability of funds collected from the issuance of the Louisiana Marine Resources Conservation Act Stamp. Funds collected through June 30, 1996, will be distributed as follows: 30 percent to the Enforcement Division of the Department in accordance with the Act, and the remaining 70 percent to be made available for the net buy-back portion of the Commercial Fisherman's Assistance Program. Subsequent to June 1996, 70 percent of the revenue collected from the LMRC Stamp will be used for the remainder of the Commercial Fisherman's Assistance Program as defined in Act 1316, R.S. 56:13.1.C.

The disbursement of available funds for nets shall be calculated on a pro rata basis to accommodate the number of qualified applicants at a rate not to exceed 50 percent of the average cost of each qualifying net. The following is a schedule of the maximum amount to be paid for each type and size of net based upon 50 percent of the average standard 1995 catalog prices not including sales tax, shipping charges, or options. Actual prices to be paid will be limited by the number of qualifying nets and by the amount of revenue collected.

<u>Mesh Depth</u>	<u>Gill Nets</u>	<u>Seines</u>
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4' - 6'	\$.25	\$.76
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over 8' - 10'	\$.38	\$.87
over 10' - 12'	\$.42	\$.92
over 12' - 14'	\$.44	\$.96
over 14'	\$.53	\$ 1.02
 <u>Trammel Nets</u>		
	<u>Price per foot</u>	
4' - 6'	\$.38	
over 6' - 8'	\$.40	
over 8' - 10'	\$.43	

over 10'

\$.45

	<u>Fish Trawls</u>
Complete	\$ 11.22 per foot of trawl width
Trawl only	\$ 6.84 per foot of trawl width

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:13.1.D.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Management and Finance, LR 22: .

Interested persons may submit written comments until 4:30 p.m., November 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000.

Joe L. Herring
Secretary

Mrs. Wynnette Kees handled the **saltwater commercial rod and reel gear license** by stating the procedures for proof of income was identical to the Commercial Fisherman's Assistance Program. Hearing no questions, Vice-Chairman Carver asked Mr. Don Puckett if a motion was needed on this item. Mr. Puckett advised on the Commission rules, one oral motion would approve both the Declaration of Emergency and Notice of Intent. Commissioner Schneider made a motion to accept the Declaration of Emergency and Notice of Intent on the saltwater commercial rod and reel gear license. Commissioner Cormier seconded the motion and passed with no opposition.

(The full text of the Declaration of Emergency and Notice of Intent is made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:305.B.(14)(b) adopts the rule set forth below. Initial promulgation of this rule as a Declaration of Emergency is necessary because Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to implement the Act effective August 15, 1995. This Declaration of Emergency is effective September 1, 1995, and it remains in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Wildlife and Fisheries Commission herein establishes procedures relative to the proof of income of applicants for a saltwater commercial rod and reel gear license.

Each applicant shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the three years, 1995, 1994, and 1993.

Proof of income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service and a copy of his state tax return which has been certified by the Department of Revenue and Taxation. In the event that the certified copies of the tax returns, including Schedule C, do not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

Glynn Carver
Vice-Chairman

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate a rule to establish the procedures relative to the proof of income criteria for applicants for a saltwater commercial rod and reel license in accordance with the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 4. License and License Fees

§405. Saltwater Commercial Rod and Reel License; Proof of Income

Each applicant shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the three years, 1995, 1994, and 1993.

Proof of income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service and a copy of his state tax return which has been certified by the Department of Revenue and Taxation. In the event that the certified copies of the tax returns, including Schedule C, do not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

AUTHORITY NOTE: Promulgated in accordance with 56:305.B.(14)(b).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22: .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments until 4:30 p.m., November 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000.

Glynn Carver
Vice-Chairman

The last section for Mrs. Wynnette Kees was the gill nets, trammel nets, strike nets and seines; and traverse permit to EEZ that would be for both the Commission and Department to act on. The Department would issue a traversing permit for a fee of \$250, it would be valid for calendar year and the captain or vessel owner would have to possess only one permit. Mrs. Kees stated the Enforcement Division had a list of administrative rules the applicants would need to follow. Commissioner Schneider asked if these regulations would have to be included as part of the law? Mr. Don Puckett stated the proposed rule could be amended to

include the permit conditions from Enforcement. Commissioner Schneider made a motion to amend the proposed rule to include the permit conditions as adopted by the Enforcement Division. Commissioner Hanchey seconded the motion and ~~was~~ ^{it} was passed with no opposition. Then Commissioner Schneider made a motion to adopt the proposed Declaration of Emergency that included the amendment. Commissioner Hanchey seconded the motion and ~~was~~ ^{it} was passed unanimously.

(The full text of the Declaration of Emergency and Notice of Intent is made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission are exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to their authority under R.S. 56:305.5.B. and R.S. 56:320.2.E. adopts the rule set forth below. Promulgation of this rule as a Declaration of Emergency is necessary because Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to implement the Act effective August 15, 1995. This Declaration of Emergency is effective September 1, 1995, and it shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby establish rules and regulations for the issuance of permits to persons authorized to possess gill nets, trammel nets, strike nets, and seines within the territorial boundaries of the state while traversing state waters to and from the federal exclusive economic zone, and to carry out the provisions of R.S. 320.1.

The Department of Wildlife and Fisheries is authorized to issue a Traversing Permit upon application to its Commercial License Section at the Baton Rouge office for a fee of \$250 for each permit. Application for permits must be made in person.

The Traversing Permit shall be valid for the calendar year of issue (January 1st through December 31st).

The captain or vessel owner shall only be required to have one Traversing Permit for any number of gill nets, trammel nets, strike nets, or seines. Each gear used in the waters of the federal exclusive economic zone (EEZ) shall be properly licensed. For

licensing purposes, trammel nets, strike nets, and seines are required to be licensed as gill nets when used in the EEZ.

The possession of gill nets, trammel nets, strike nets, or seines on or aboard any vessel in the saltwater areas of the state is prohibited unless the captain or owner of the vessel has in his immediate possession upon the vessel a Traversing Permit as well as any other licenses as required by law.

While traversing state waters going to and from the waters of the federal exclusive economic zone, all gill nets, trammel nets, strike nets, and seines shall remain on board the vessel and shall not be used in state waters.

Harvest and possession of all fish pursuant to this permit is subject to all rules established by the Wildlife and Fisheries Commission relative to seasons, size limits, and quotas.

Vessels containing or transporting prohibited nets shall proceed as directly, continuously, and expeditiously as possible.

Permittees will be required to abide by the following conditions:

1. Possession of a permit does not exempt the permittee from laws or regulations except for those which may be specifically exempted by the permit. Any violation of a fish law shall constitute a violation of this permit.

2. Information gained by the Department through the issuance of a Traversing Permit is not privileged and will be disseminated to the public upon request.

3. The permittee shall report monthly the catch and effort under the permit, even when catch and effort is zero. This report shall contain total catch, total effort, and any other parameters which may be required by the Department. The report shall be filed with the Enforcement Division of the Department of Wildlife and Fisheries no later than 30 days following the last day of each month.

4. When permitted gear is on board the permitted vessel or in possession of the permittee, the permittee and the vessel are assumed to be operating under authority of the permit. No gear other than gear allowed under the Traversing Permit may be on board the vessel or in possession of the permittee.

5. The vessel authorized for use under the Traversing Permit shall have distinguishing signs so that it may be identified as such. The signs shall have the letters "EEZ" and assigned numbers printed on them in at least ten-inch-high letters and numbers on a contrasting background in block style so as to be visible and

legible from low-flying aircraft and from any vessel in the immediate vicinity. The assigned numbers shall be situated on both sides and on top of the vessel.

6. The Department reserves the right to observe the operations taking place under the Traversing Permit and, at its request, the Department may assign aboard any permitted vessel an enforcement agent as an observer.

7. All permittees shall notify the Department four hours prior to leaving port to traverse or fish under the conditions of the Traversing Permit and immediately upon returning from the permitted trip. The Department shall be notified by calling a designated phone number.

8. The permittee must report to the Department the name of the buyer who will purchase the fish product obtained under the Traversing Permit. This information shall be provided at the time that permittee notifies the Department of his return.

9. When quotas have been met or seasons have been closed, no fish affected by such quotas or seasons may be possessed on board a vessel while having commercial gear on board traveling state waters.

10. Any violation of the conditions of the Traversing Permit and any violation of any fisheries regulation shall be punishable as defined by R.S. 56:320.2.D.(1) in accordance with Act 1316 of the 1995 Legislature.

Joe L. Herring
Secretary

Glynn Carver
Vice-Chairman

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission does hereby give notice of their intent to promulgate a rule to establish the rules and regulations for the issuance of Traversing Permits to persons authorized to possess gill nets, trammel nets, strike nets, and seines within the territorial boundaries of the state while traversing state waters to and from the federal exclusive economic zone.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 4. License and License Fees

§403. Traversing Permit

The Department of Wildlife and Fisheries is authorized to issue a Traversing Permit upon application to its Commercial License Section at the Baton Rouge office for a fee of \$250 for each permit. Application for permits must be made in person.

The Traversing Permit shall be valid for the calendar year of issue (January 1st through December 31st).

The captain or vessel owner shall only be required to have one Traversing Permit for any number of gill nets, trammel nets, strike nets, or seines. Each gear used in the waters of the federal exclusive economic zone (EEZ) shall be properly licensed. For licensing purposes, trammel nets, strike nets, and seines are required to be licensed as gill nets when used in the EEZ.

The possession of gill nets, trammel nets, strike nets, or seines on or aboard any vessel in the saltwater areas of the state is prohibited unless the captain or owner of the vessel has in his immediate possession upon the vessel a Traversing Permit as well as any other licenses as required by law.

While traversing state waters going to and from the waters of the federal exclusive economic zone, all gill nets, trammel nets, strike nets, and seines shall remain on board the vessel and shall not be used in state waters.

Harvest and possession of all fish pursuant to this permit is subject to all rules established by the Wildlife and Fisheries Commission relative to seasons, size limits, and quotas.

Vessels containing or transporting prohibited nets shall proceed as directly, continuously, and expeditiously as possible.

Permittees will be required to abide by the following conditions:

1. Possession of a permit does not exempt the permittee from laws or regulations except for those which may be specifically exempted by the permit. Any violation of a fish law shall constitute a violation of this permit.

2. Information gained by the Department through the issuance of a Traversing Permit is not privileged and will be disseminated to the public upon request.

3. The permittee shall report monthly the catch and effort under the permit, even when catch and effort is zero. This report shall contain total catch, total effort, and any other parameters which may be required by the Department. The report shall be filed with the Enforcement Division of the Department of Wildlife and Fisheries no later than 30 days following the last day of each month.

4. When permitted gear is on board the permitted vessel or in possession of the permittee, the permittee and the vessel are assumed to be operating under authority of the permit. No gear other than gear allowed under the Traversing Permit may be on board the vessel or in possession of the permittee.

5. The vessel authorized for use under the Traversing Permit shall have distinguishing signs so that it may be identified as such. The signs shall have the letters "EEZ" and assigned numbers printed on them in at least ten-inch-high letters and numbers on a contrasting background in block style so as to be visible and legible from low-flying aircraft and from any vessel in the immediate vicinity. The assigned numbers shall be situated on both sides and on top of the vessel.

6. The Department reserves the right to observe the operations taking place under the Traversing Permit and, at its request, the Department may assign aboard any permitted vessel an enforcement agent as an observer.

7. All permittees shall notify the Department four hours prior to leaving port to traverse or fish under the conditions of the Traversing Permit and immediately upon returning from the permitted trip. The Department shall be notified by calling a designated phone number.

8. The permittee must report to the Department the name of the buyer who will purchase the fish product obtained under the Traversing Permit. This information shall be provided at the time that permittee notifies the Department of his return.

9. When quotas have been met or seasons have been closed, no fish affected by such quotas or seasons may be possessed on board a vessel while having commercial gear on board traveling state waters.

10. Any violation of the conditions of the Traversing Permit and any violation of any fisheries regulation shall be punishable as defined by R.S. 56:320.2.D.(1) in accordance with Act 1316 of the 1995 Legislature.

AUTHORITY NOTE: Promulgated in accordance with 56:305.B and 56:320.2.E.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22: .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments until 4:30 p.m., November 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000.

Joe L. Herring
Secretary

Glynn Carver
Vice-Chairman

Mr. Don Puckett stated the **freshwater commercial gill nets and trammel nets: establishment of a marking system** was a Department rule and recommended this rule be deferred.

Moving on, Mr. Harry Blanchet dealt with **mullet regulations for taking; entry of commercial fisherman into the fishery**. Mr. Blanchet explained this new rule modified the existing Commission rule to fall into the framework of Act 1316. These modifications included the commercial seasons, not allowing the take of mullet after sunset, before sunrise, from 5 a.m. Saturday until 6 p.m. on Sunday, only taking mullet with a mullet strike net and a provision for permits. Commissioner Schneider asked Representative Triche if he intended to amend R.S. 56:333 in the Act? Representative Triche stated the bill did amend various sections. Mr. Blanchet stated Section 333 was originally established by the 1991 Legislature and several provisions specific to harvest of mullet were included in Act 1316. Commissioner Hanchey made a motion to accept the Resolution and was seconded by Commissioner Schneider. The motion passed with no opposition.

(The full text of the Resolution, Declaration of Emergency and Notice of Intent is made a part of the record.)

RESOLUTION

RULES FOR HARVEST OF MULLET

WHEREAS, the existing rule governing the harvest of mullet was promulgated in January 1995, and

WHEREAS, Act 1316 of the 1995 Regular Legislative Session amends R.S. 56:333, thereby directing changes in the seasons, gears, and licenses and permit requirements for commercial harvest of mullet, and

WHEREAS, emergency procedures must be utilized in order to have the necessary rules in place upon the effective date of the legislation,

THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission does hereby establish emergency rules and promulgate a notice of intent to amend the published regulations concerning the harvest of mullet.

BE IT FURTHER RESOLVED, that the complete copy of the Declaration of Emergency, Notice of Intent and proposed rule are attached to and made part of this resolution.

Perry Gisclair, Chairman
La. Wildlife & Fisheries
Commission

Joe L. Herring, Secretary
La. Department of Wildlife &
Fisheries

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(25)(a), 56:326.3, and 56:333 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation Act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on September 1, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§343. Rules for Harvest of Mullet

A. Seasons

1. The season for the commercial taking of mullet shall begin at sunrise of the third Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially at any time outside of this season.

2. Commercial harvest of mullet shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of mullet during the period after sunset and before sunrise.

B. Commercial Taking

1. Mullet may only be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of one thousand two hundred feet in length or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits. The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

E. Permits

1. The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents.

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his Federal Income Tax Return including Schedule C of Federal Form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet.

4. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet.

5. Each Mullet Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of mullet taken commercially during the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

F. General Provisions. Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

G. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:325.1, 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992); amended LR 21:37 (January 1995); LR 22: .

Glynn Carver
Vice-Chairman

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule (Title 76, Part VII, Ch. 3, §343) to amend the regulations governing the commercial harvest of mullet. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included R.S. 56:6(25)(a); 56:326.3; 56:333; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§343. Rules for Harvest of Mullet

A. Seasons

1. The season for the commercial taking of mullet shall begin at sunrise of the third Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially at any time outside of this season.

2. Commercial harvest of mullet shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of mullet during the period after sunset and before sunrise.

B. Commercial Taking

1. Mullet may only be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of one thousand two hundred feet in length or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits. The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

E. Permits

1. The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents.

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet.

4. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet.

5. Each Mullet Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of mullet taken commercially during the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

F. General Provisions. Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

G. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)a), 56:325.1, 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992); amended LR 21:37 (January 1995); LR 22: .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

Glynn Carver
Vice-Chairman

Mr. Harry Blanchet took the **spotted seatrout: season(s) and entry of commercial fisherman into the fishery** as the next item. The first portion of this rule dealt with the commercial seasons.

A letter from Representative Triche stated there was no intent to modify the existing seasons for the harvest of spotted seatrout. Discussions occurred among the staff over season dates and as such Lt. Col. Charlie Clark addressed the Commission with Enforcement's concerns. Lt. Col. Clark stated he had a concern ~~on~~ ^{that} the traversing permit and gill net license would allow the speckled trout season to open before the netting season would open in state waters. Vice-Chairman Carver asked if this was the intent of the bill? Representative Triche stated the intent of the bill was to give a phase out season for a two year period for netting and that there was no intention to have a year round season fishing speckled trout. After the two year phase out seasons, the fishing was to be a rod and reel industry. Lt. Col. Clark stated it was understood the seasons would start on November 20 on one year and November 18 the next year and the rod and reel gear season would occur after the May 1 closure until the million pound quota was reached. Then he stated, as far as Enforcement was concerned, November 20 would be a good date for the netting season. Commissioner Schneider asked for someone to explain when fishing could occur, with what type gear and when fishing would stop?

Mr. George Carmouche stated the Commission already had the September through April season for spotted seatrout, so in interpreting the law, the season could start in September and run through April and also implement a special mullet strike season from the November date until March. Commissioner Schneider asked if the season opened in September, would you be fishing with rod and reel only? Mr. Carmouche stated any type of legal gear could be used. Further on in the Act, Mr. Carmouche explained the two seasons of November 20 through March 1, 1996 and November 18 through March 1, 1997 and how after the closure dates occur, there would be a rod and reel season. The only certain thing with the law is the one million pound quota for spotted seatrout. Commissioner Cormier concurred with Mr. Carmouche and Lt. Col. Clark that legal gear be used during the time frame normally set and then the Secretary would determine the rod and reel season until the quota was met. Mr. Blanchet reminded the Commissioners there were two bounds already established, a million pound quota and a May 1 closure date whether the quota was met or not. In his originally proposed rule, Mr. Blanchet stated he opened the season on the third Monday in November but it was more difficult to describe a closing date. Commissioner Schneider asked which proposed rule, if any, represented the intent of Representative Triche's letter that was received by the Commission? Mr. Puckett stated the Commission's authority to set the season of September through May 1 date was not removed and it can be maintained or the dates could be modified. Included within this season was to be a special mullet strike net season for the taking of spotted seatrout, stated Mr. Puckett. After the closure of the mullet strike net season, a rod and reel would be classified as the legal gear for the taking of spotted seatrout. Commissioner Vujnovich asked if this rod and reel season was only if the quota was not

reached? Then Commissioner Vujnovich suggested setting the season to open September 15 and close when quota was met or May 1 if quota was not met. Mr. Puckett stated his intent of the legislature was to allow any legal gear ~~could~~ be used until the end of the mullet strike net season. Commissioner Schneider asked Representative Triche if this was the intent of the legislature? Representative Triche read from the proposed rule submitted to the Commissioners at the August 9th meeting. He stated he never envisioned fishing spotted seatrout for a full year with the one million pound quota. He further stated the intent of the bill was to allow for two close out seasons for the taking of spotted seatrout with a strike net. The implementation of a commercial harvest of spotted seatrout was to occur from the third Monday in November and continue until March 1 within the Commission's parameter. At this point, Representative Triche read from his letter sent to the Commissioners. He commented he agreed with the Enforcement Division in trying to include the provisions of enforcing the law. Lt. Col. Clark asked if the Commission stayed with the September opening date, would rod and reel be allowed from September 15 until November 20 for the harvesting of spotted seatrout? Commissioner Cormier asked if these dates were enforceable?

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Mr. George Carmouche stated you have to look at the law, and legislative intent was rarely used except in the courts. He further stated the Commission has the authority to set seasons and if the season was set for September, any legal gear could be used at least through the first mullet strike season. Only after the second season closed would the rod and reel be required. Lt. Col. Clark stated the perfect law enforcement clarification would be to open the season on November 20 and run through April 30 and then if the quota has not been met, have the commercial rod and reel season. Commissioner Vujnovich asked if Lt. Col. Clark was recommending opening the season on November 20. Commissioner Schneider asked if Enforcement wanted both seasons to open at the same time? Mr. Blanchet stated the change in opening dates could be modified in the proposed rule and the season would close on May 1 whether the quota has been reached or not. Commissioner Vujnovich asked if the mullet strike net and the spotted seatrout strike net were one ~~in~~ the same net? Mr. Blanchet felt the intent of the law was to have a very specific time that a fishermen could have spotted seatrout on board that was taken with mullet strike nets. Commissioner Vujnovich asked if the mullet strike net could only be used for 90 days to harvest spotted seatrout? Mr. Blanchet answered yes. Vice-Chairman Carver asked for the pleasure of the Commission. Commissioner Cormier made a motion to accept the time frame according to Commissioner Schneider and Lt. Col. Clark and if ~~the~~ quota not met, allow the rod and reel fishery. Mr. Blanchet explained the season would begin at sunrise on the third Monday in November of each year and close on March 1 for the mullet strike net season, then allow the use of the rod and reel fishery until May 1 or the one million pound quota was met. Commissioner Schneider seconded the motion and ~~passed~~ *it* with no opposition.

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Mr. Blanchet then explained the remainder of the proposed rule such as no harvesting at night, continued the quota, a permit system, proof of income, and reporting requirements. Commissioner Schneider asked if the buyer and seller could both be required to report their catches? While Mr. Blanchet continued his review, Commissioner Schneider asked what was meant by "all legal gear"? Then he asked if this gear included gill nets? Representative Triche explained strike net was defined to mean any gill net, trammel net or seine net not anchored or secured to the waterbottom. The legislators wanted to remove gill nets completely in order to outlaw the gill nets and went with the term mullet strike net. The major difference between a gill net and mullet strike net is a strike net has to be actively worked, it can not be set and left unattended. A paragraph in the proposed rule would be deleted due to the change in opening dates, stated Mr. Blanchet. Vice-Chairman Carver asked if there was a need for a motion to delete the paragraph? Mr. Puckett suggested a motion was needed first to delete the paragraph Mr. Blanchet referred to and then a motion to adopt the Declaration of Emergency and Notice of Intent. Commissioner Cormier made a motion to delete the referenced paragraph as recommended. Commissioner Schneider seconded the motion and it passed with no opposition. Then Commissioner Hanchey made a motion to adopt the Declaration of Emergency and Notice of Intent. Again Commissioner Schneider seconded the motion and it passed unanimously.

(The full text of the Resolution, Declaration of Emergency and Notice of Intent is made a part of the record.)

RESOLUTION

RULES FOR HARVEST OF SPOTTED SEATROUT

- WHEREAS, the existing rule governing the harvest of spotted seatrout was promulgated in February 1992, and
- WHEREAS, Act 1316 of the 1995 Regular Legislative Session amends R.S. 56:325.3, thereby directing changes in the seasons, gears, and licenses and permit requirements for commercial harvest of spotted seatrout, and
- WHEREAS, emergency procedures must be utilized in order to have the necessary rules in place upon the effective date of the legislation,
- THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission does hereby establish emergency rules and promulgate a notice of intent to amend the published regulations concerning the harvest of spotted seatrout.

BE IT FURTHER RESOLVED, that the complete copy of the Declaration of Emergency, Notice of Intent and proposed rule are attached to and made part of this resolution.

Perry Gisclair, Chairman
La. Wildlife & Fisheries
Commission

Joe L. Herring, Secretary
La. Department of Wildlife &
Fisheries

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(10), 56:6(25)(a), 56:325.3, 56:326.3, and 56:325.3 as amended by Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation Act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on September 1, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§341. Spotted Seatrout Management Measures

A. Commercial Season; Quota; Permits

1. The season for the commercial taking of spotted seatrout shall begin at sunrise on the third Monday in November of each year, and close at sunset on May 1 the following year or when the quota has been reached or on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever occurs first.

2. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial quota for spotted seatrout shall be one million pounds for each fishing season.

4. Permits

a. The commercial taking of spotted seatrout is prohibited except by special non-transferable Spotted Seatrout Permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents.

b. No person shall be issued a license or permit for the commercial taking of spotted seatrout unless that person meets all of the following requirements:

i. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

ii. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his Federal Income Tax Return including Schedule C of Federal Form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

iii. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

iv. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

c. No person shall receive more than one permit or license to commercially take spotted seatrout.

d. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take spotted seatrout and shall be forever barred from receiving any permit or license to commercially take spotted seatrout.

5. Each Spotted Seatrout Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of spotted seatrout taken

commercially during the preceding month, and the commercial dealers to whom these were sold, if sold. Monthly reports shall be filed, even if catch or effort is zero.

B. Commercial Taking of Spotted Seatrout Using Mullet Strike Nets, Seasons

1. There shall be two seasons for the commercial harvest of spotted seatrout with a mullet strike net: the first season shall open on Monday, November 20, 1995, and end no later than March 1, 1996; the second season shall open on Monday, November 18, 1996, and end no later than March 1, 1997. Such seasons shall be closed prior to the dates listed in this paragraph if (a) one million pounds of spotted seatrout have been taken commercially during a fishing season, or (b) on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever occurs first. The closure shall not take effect for at least 72 hours after notice to the public.

2. During these two seasons the commercial harvest of spotted seatrout with mullet strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial taking of spotted seatrout by using a mullet strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one mullet strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take spotted seatrout. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Taking of Spotted Seatrout Using Other Commercial Gear

1. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

2. During the 1995-1996 season for harvest of spotted seatrout with a mullet strike net, all other legal methods of harvest may also be used until March 1, 1996. After that date, only commercial rod and reel may be used for the commercial harvest of spotted seatrout, provided that the commercial harvest of spotted seatrout does not exceed the commercial quota.

3. During the 1996-1997 season for commercial harvest of spotted seatrout with a mullet strike net, only a mullet strike net or a commercial rod and reel may be used for the commercial harvest of spotted seatrout provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

4. Following the closure of the 1996-1997 season for the harvest of spotted seatrout with a mullet strike net, only a commercial rod and reel shall be used for the commercial harvest of spotted seatrout, provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

D. General Provisions. Effective with the closure of the commercial season for spotted seatrout, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of spotted seatrout on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of spotted seatrout legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

AUTHORITY NOTE: Promulgated in accordance with Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a); 56:325.3; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992); amended LR 22: .

Glynn Carver
Vice-Chairman

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule (Title 76, Part VII, Ch. 3, §341) to amend the regulations governing the commercial harvest of spotted seatrout. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included in Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a); 56:325.3; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§341. Spotted Seatrout Management Measures

A. Commercial Season; Quota; Permits

1. The season for the commercial taking of spotted seatrout shall begin at sunrise on the third Monday in November of each year, and close at sunset on May 1 the following year or when the quota has been reached or on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever occurs first.

2. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial quota for spotted seatrout shall be one million pounds for each fishing season.

4. Permits

a. The commercial taking of spotted seatrout is prohibited except by special non-transferable Spotted Seatrout Permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents.

b. No person shall be issued a license or permit for the commercial taking of spotted seatrout unless that person meets all of the following requirements:

i. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

ii. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

iii. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

iv. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

c. No person shall receive more than one permit or license to commercially take spotted seatrout.

d. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take spotted seatrout and shall be forever barred from receiving any permit or license to commercially take spotted seatrout.

5. Each Spotted Seatrout Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of spotted seatrout taken commercially during the preceding month, and the commercial dealers to whom these were sold, if sold. Monthly reports shall be filed, even if catch or effort is zero.

B. Commercial Taking of Spotted Seatrout Using Mullet Strike Nets, Seasons

1. There shall be two seasons for the commercial harvest of spotted seatrout with a mullet strike net: the first season shall open on Monday, November 20, 1995, and end no later than March 1, 1996; the second season shall open on Monday, November 18, 1996, and end no later than March 1, 1997. Such seasons shall be closed prior to the dates listed in this paragraph if (a) one million pounds of spotted seatrout have been taken commercially during a fishing season, or (b) on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever occurs first. The closure shall not take effect for at least 72 hours after notice to the public.

2. During these two seasons the commercial harvest of spotted seatrout with mullet strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial taking of spotted seatrout by using a mullet strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one mullet strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take spotted seatrout. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Taking of Spotted Seatrout Using Other Commercial Gear

1. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

2. During the 1995-1996 season for harvest of spotted seatrout with a mullet strike net, all other legal methods of harvest may also be used until March 1, 1996. After that date, only commercial rod and reel may be used for the commercial harvest of spotted seatrout, provided that the commercial harvest of spotted seatrout does not exceed the commercial quota.

3. During the 1996-1997 season for commercial harvest of spotted seatrout with a mullet strike net, only a mullet strike net or a commercial rod and reel may be used for the commercial harvest of spotted seatrout provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

4. Following the closure of the 1996-1997 season for the harvest of spotted seatrout with a mullet strike net, only a commercial rod and reel shall be used for the commercial harvest of spotted seatrout, provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

D. General Provisions. Effective with the closure of the commercial season for spotted seatrout, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of spotted seatrout on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of spotted seatrout legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

AUTHORITY NOTE: Promulgated in accordance with Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a); 56:325.3; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992); amended LR 22: .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

Glynn Carver
Vice-Chairman

Mr. Harry Blanchet also handled the **black drum, sheepshead and flounder: regulations for the entry of commercial fisherman into the fishery.** These regulations established a net permit, named Drum, Sheepshead Strike Net Permit, required of fishermen to commercially take black drum, sheepshead and flounder with a pompano strike net. These species can only be taken with the pompano strike net and other legal means. The intent was to have a set of rules for the harvest of these three species with pompano strike nets. The different sections of the proposed rule were explained by Mr. Blanchet. Commissioner Babin asked if this clarified Chairman Gisclair's question from the last meeting on net trawls with the new Drum, Sheepshead Strike Net Permit? Mr. Blanchet answered yes. Commissioner Schneider made a motion to accept the Declaration of Emergency and Notice of Intent. Commissioner Babin seconded the motion and ~~passed~~ ^{it} with no opposition.

(The full text of the Resolution, Declaration of Emergency and Notice of Intent is made a part of the record.)

RESOLUTION

RULES FOR HARVEST OF BLACK DRUM, SHEEPSHEAD AND FLOUNDER WITH POMPANO STRIKE NETS

WHEREAS, Act 1316 of the 1995 Regular Legislative Session enacts R.S.56:325.4, thereby directing changes in the seasons, gears, and licenses and permit requirements for commercial harvest of black drum, sheepshead and flounder, and other species of saltwater finfish, other than spotted seatrout, red drum, and mullet, and

WHEREAS, emergency procedures must be utilized in order to have the necessary rules in place upon the effective date of the legislation,

THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission does hereby establish emergency rules and promulgate a notice of intent to establish permanent regulations concerning the harvest of black drum, sheepshead and flounder with pompano strike nets

BE IT FURTHER RESOLVED, that the complete copy of the Declaration of Emergency, Notice of Intent and proposed rule are attached to and made part of this resolution.

Perry Gisclair, Chairman
La. Wildlife & Fisheries
Commission

Joe L. Herring, Secretary
La. Department of Wildlife &
Fisheries

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(10), 56:6(25)(a), 56:326.1, 56:326.3, and 56:325.4 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation Act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on September 1, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Wildlife and Fisheries Commission herein establishes rule and regulations governing the harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§349. Rules for Harvest of Black Drum, Sheepshead, Flounder and Other Saltwater Species using Pompano Strike Nets

A. Drum/Sheepshead Strike Net Permit

1. The commercial taking of black drum, sheepshead and flounder with pompano strike nets is prohibited except by special permit issued by the Department of Wildlife and Fisheries, hereby designated as a Drum/Sheepshead Strike Net Permit. This permit is required in addition to the Pompano Strike Net License required by law.

2. No person shall be issued a Drum/Sheepshead Strike Net Permit unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his Federal Income Tax Return including Schedule C of Federal Form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

d. The applicant shall not have been convicted of any fishery-related violations that constitutes a class three or greater violation.

3. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any Drum/Sheepshead Strike Net Permit and shall be forever barred from receiving any such permit in the future.

B. Commercial Taking of Saltwater Finfish using Pompano Strike Nets

1. There shall be two seasons for the commercial harvest of all species of saltwater finfish (other than mullet, spotted seatrout and red drum) with a pompano strike net: the first season shall open on Monday October 16, 1995, and end with the closure of the mullet strike net season, but no later than March 1, 1996; the second season shall open on Monday October 21, 1996, and end with the closure of the mullet strike net season, but no later than March 1, 1997. A season for the taking of these species shall be closed prior to the dates listed in this paragraph if the commercial quota for that species has been taken, or on the date projected by the staff of the Department of Wildlife and Fisheries that a quota will be reached, whichever occurs first. The closure shall not take effect for at least 72 hours after notice to public.

2. During these two seasons the commercial harvest of these species with pompano strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of these species with pompano strike nets during the period after sunset and before sunrise.

3. The commercial taking of these species by using a pompano strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one pompano strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the Drum/Sheepshead Strike Net Permit number, if applicable. The department shall not issue any tag to a person who does not have a social security number.

5. Each Drum/Sheepshead Strike Net Permit holder shall on or before the tenth of each month file a return to the department on forms provided or approved for the purpose, the pounds of black drum from 16 to 27 inches, the number of black drum over 27 inches, the pounds of sheepshead and the pounds of flounder taken commercially during the preceding month, the gears used for harvest, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

C. General Provisions. Effective with the closure of a commercial season for black drum, sheepshead, or flounder, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of that species on the waters of the state with pompano strike nets in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of fish legally taken during any open period provided that those who are required to do so shall maintain appropriate records in

accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:698 (August 1990); amended LR 22: .

Glynn Carver
Vice-Chairman

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule (Title 76, Part VII, Ch. 3, §349) to establish regulations governing the commercial harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included in R.S. 56:6(10); 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§349. Rules for Harvest of Black Drum, Sheepshead, Flounder and Other Saltwater Species using Pompano Strike Nets

A. Drum/Sheepshead Strike Net Permit

1. The commercial taking of black drum, sheepshead and flounder with pompano strike nets is prohibited except by special permit issued by the Department of Wildlife and Fisheries, hereby designated as a Drum/Sheepshead Strike Net Permit. This permit is required in addition to the Pompano Strike Net License required by law.

2. No person shall be issued a Drum/Sheepshead Strike Net Permit unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

d. The applicant shall not have been convicted of any fishery-related violations that constitutes a class three or greater violation.

3. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any Drum/Sheepshead Strike Net Permit and shall be forever barred from receiving any such permit in the future.

B. Commercial Taking of Saltwater Finfish using Pompano Strike Nets

1. There shall be two seasons for the commercial harvest of all species of saltwater finfish (other than mullet, spotted seatrout and red drum) with a pompano strike net: the first season shall open on Monday October 16, 1995, and end with the closure of the mullet strike net season, but no later than March 1, 1996; the second season shall open on Monday October 21, 1996, and end with the closure of the mullet strike net season, but no later than March 1, 1997. A season for the taking of these species shall be closed prior to the dates listed in this paragraph if the commercial quota for that species has been taken, or on the date projected by the staff of the Department of Wildlife and Fisheries that a quota will be reached, whichever occurs first. The closure shall not take effect for at least 72 hours after notice to public.

2. During these two seasons the commercial harvest of these species with pompano strike nets shall not be allowed during

the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of these species with pompano strike nets during the period after sunset and before sunrise.

3. The commercial taking of these species by using a pompano strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one pompano strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the Drum/Sheepshead Strike Net Permit number, if applicable. The department shall not issue any tag to a person who does not have a social security number.

5. Each Drum/Sheepshead Strike Net Permit holder shall on or before the tenth of each month file a return to the department on forms provided or approved for the purpose, the pounds of black drum from 16 to 27 inches, the number of black drum over 27 inches, the pounds of sheepshead and the pounds of flounder taken commercially during the preceding month, the gears used for harvest, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

C. General Provisions. Effective with the closure of a commercial season for black drum, sheepshead, or flounder, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of that species on the waters of the state with pompano strike nets in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of fish legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

AUTHORITY NOTE: Promulgated in accordance with 56:6(10), 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:698 (August 1990); amended LR 22: .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

Glynn Carver
Vice-Chairman

Mr. Don Puckett stated Mr. Bennie Fontenot had the final proposed rule and was presented for information only since the rule would be promulgated by the Secretary. Mr. Fontenot stated the proposed rule was a repeat of an established saltwater rule with the word saltwater replaced with freshwater. He also reminded the Commission the Department would promulgate this rule.

(The full text of the Declaration of
Emergency and Notice of Intent is
made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Office of Fisheries

The Department of Wildlife and Fisheries is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:320(F), adopts the rule set forth below.

Each gill net or trammel net used to take freshwater commercial fish shall be marked with a waterproof tag attached to the corkline at each end of the net, no more than three feet from the edge of the webbing. Said tags shall be supplied by the commercial fisherman and shall be completely waterproof. Each tag shall have the fisherman's full name (no initials) and commercial fisherman's license number (not the net license number) printed thereon in the English language, so as to be clearly legible.

This Declaration of Emergency is necessary because Act 1316 of the 1995 Legislature mandates the Department of Wildlife and Fisheries to adopt this rule. The effective date of Act 1316 is August 15, 1995, and the effective date of the Declaration of Emergency shall be September 1, 1995. It shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Joe L. Herring
Secretary

NOTICE OF INTENT

Department of Wildlife and Fisheries

Office of Fisheries

The Secretary of the Department of Wildlife and Fisheries hereby advertises his intent to adopt a rule for marking gill and trammel nets used to take freshwater commercial fish.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 1. Freshwater Sport and Commercial Fishing

§181. Marking System for Freshwater Gill Nets and Trammel Nets

Each gill net or trammel net used to take freshwater commercial fish shall be marked with a waterproof tag attached to the corkline at each end of the net, no more than three feet from the edge of the webbing. Said tags shall be supplied by the commercial fisherman and shall be completely waterproof. Each tag shall have the fisherman's full name (no initials) and commercial fisherman's license number (not the net license number) printed thereon in the English language, so as to be clearly legible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:320(F).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Fisheries, LR 21: .

Interested persons may submit written comments on the rule to Mr. Bennie Fontenot, Jr., Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Friday, November 10, 1995.

Joe L. Herring
Secretary

Mr. Pete Gerica stated the majority of the fish caught such as mullet and trout are caught at night. But then he asked Enforcement, if he was riding with a gill net in the boat, how would it be determined what net he has? Lt. Col. Clark stated whatever a fisherman bought a license for is what the net would be called. Discussion between Mr. Gerica and Lt. Col. Clark continued on the different gear and traveling by boat through the different types of waterbodies.

After concluding the discussion on Act 1316, Vice-Chairman Carver asked for the **Secretary's Report** to the Commission. Secretary Herring stated Senator Breaux has helped provide approximately \$15 million to the gulf states for fishery work in the Gulf of Mexico. Louisiana's plan is to use their share for

habitat work and ^{that} would be good for fisheries. Mr. Corky Perret would be meeting with the different gulf states to work out some management plans.

The Department has received several calls from charter boat owners from Louisiana and Mississippi on the new license required. The Mississippi owners were complaining about the \$1,000 non-resident fee.

Finally, Secretary Herring thanked the staff for working on Act 1316 and the time they took trying to solve a complicated issue in order for it to work.

Vice-Chairman Carver then asked for **Public Comments**. Mr. Paul Baier, attorney for the commercial fishermen, stated he wanted the Commission to realize they were not there to do battle. He then explained about the Department and Commission being named in the lawsuit.

There being no further business, Commissioner Schneider made a motion to **Adjourn** the meeting.

Joe L. Herring
Secretary

JLH:sch

Edwards wants courts to throw out gill-net limits

Advocate staff and wire reports

Gov. Edwin Edwards said Tuesday he would like the courts to throw out restrictions on the use of gill nets by commercial fishermen.

"The law is fraught with a great number of inconsistencies," Edwards said.

"I really think the subject needs to be revisited not in an election year. ... I think the opponents have a good point when they say this was more of a political decision than a biological decision."

Meanwhile, the Wildlife and Fisheries Commission is preparing to enforce the complicated ban if a court order blocking its enforcement is lifted.

A state district judge stopped enforcement of the new law for at least 10 days to give commercial fishing interests a hearing on their suit to kill the legislation.

The commission, however, was given the OK by the judge to approve rules and regulations needed to make the law work, contingent on a final legal ruling.

The new law, passed after much behind-the-scenes maneuvering during this year's legislative session, calls for a full ban on gill nets after March 1997.

Until then, it allows commercial fishermen to catch speckled trout and mullet during designated seasons with "strike nets," unanchored gill nets that aren't left unattended.

The law also sets net seasons and restrictions on other species of fish.

On Monday, in a lawsuit filed by the Louisiana Seafood Management Council and other plaintiffs, state District Court Judge Janice Clark issued a temporary

Gill net

CONTINUED FROM PAGE 1B

restraining order, which blocked the law from taking effect Tuesday as scheduled.

The lawsuit claims that there is no scientific basis for the law, and unfairly favors recreational fishermen over commercial fishermen.

The measure's supporters claim the gill net restrictions will help conserve fish for commercial and recreational fishermen.

Edwards said at a news conference that he would like to see enforcement of the law postponed until the Legislature can deal with the issue.

"There's still no compelling evidence on a biological or scientific basis that this is really needed or will provide for an increase in fish species," Edwards said.

Edwards grudgingly signed the law after it passed, saying he had promised its proponents that if certain compromises were made he would go along.

The problem facing the Wildlife and Fisheries Commission was that there were two versions of the bill, and the final one was amended so many times in the final days of the session that even the proponents had a difficult time keeping up with what was done.

To compensate commercial fishermen to some degree, the law mandates that the Department of Wildlife and Fisheries buy the existing gill nets and financially help the fishermen in other ways, including providing job training. All that must be done by January.

The funding source for these programs will come from an additional \$3 fee on saltwater recreational fishing licenses.

The rules approved by the commission would pay the fishermen about one half of what it cost to buy a basic net. But many of the fishermen have options on their nets that drive up their costs.

Commission members acknowledged that the \$3 fee may not bring in enough to do what the law tells them to do. Most of the other rules on financial aid dealt with how a fisherman's income will be determined. Any financial aid will depend on what the fisherman earned when the nets were legal. The law provided that fishermen must verify income by providing two Internal Revenue Service forms.

Another hurdle: The law allows a brief speckled trout season with strike nets for the next two years. A strike net is, in effect, a gill net, but it must be actively manned and not unattended while in use in the water. The law also limited fishermen to 1,200 feet of netting for strike nets.

Recreational fishermen complained that the coast has been filled with unattended gill nets that create barriers to sports fishing.

The law is not clear on the season dates, said the commission members.

Finally, with advice from attorneys, the commission decided the strike net season will be from the third Monday in November to March 1 each of the next two years.

From March 1 until May 1, or until a 1 million-pound quota is met, the commercial fishermen can use rods and reels to catch speckled trout.

That is, unless the law is ruled unconstitutional, Senate President Sammy Nunez, D-Chalmette, reminded commission members.

AGENDA

LOUISIANA WILDLIFE AND FISHERIES COMMISSION

BATON ROUGE, LA

August 15, 1995

10:00 AM

- ✓1. Roll Call
- ✓2. Declaration(s) of Emergency and Notice(s) of Intent to Implement Act 1316, the Louisiana Marine Resources Conservation Act of 1995, including but not limited to, regulations governing:
 - ✓a. commercial fisherman's assistance program: proof of income and eligibility; schedule of payments for nets.
 - ✓b. rod and reel commercial gear license: procedures for proof of income and eligibility.
 - ✓c. gill nets, trammel nets, strike nets and seines; traverse permit to EEZ.
 - d. freshwater commercial gill nets and trammel nets: establishment of a marking system.
 - e. Federal Exclusive Economic Zones (EEZ) regulation governing possession of gill nets, trammel nets, strike nets or seines; permits, regulation and enforcement.
 - ✓f. spotted seatrout: season(s) and entry of commercial fisherman into the fishery.
 - g. black drum, sheepshead and flounder: regulations for the entry of commercial fisherman into the fishery.
 - ✓h. mullet: regulations for taking; entry of commercial fisherman into the fishery.
 - i. any and all regulations necessary or pursuant to the above.
 - j. any and all other regulations required or authorized by Act 1316 of 1995.
3. Secretary's Report to the Commission - Joe Herring
4. Public Comments
5. Adjourn

Regular Session, 1995

HOUSE BILL NO. 815 *ACT # 1316*

BY REPRESENTATIVE TRICHE AND SENATOR CROSS

AN ACT

To amend and reenact R.S. 56:8(52), (97), (102), (113), and (116), 302.3(D), 305(B)(4) and (10) and (C)(2), 305.5, 320(B)(1) and (3), (F), and (I)(1), 322(C)(5) and (7) and (J), 333(A), (B), and (D), 406(A)(1) and (3)(a), (b), and (d) and (C), and 640.3, to enact R.S. 56:8(66.1), (66.2), 13, 13.1, 68.2, 302.9, 305(B)(14) and (F), 320.1, 320.2, 325.3(C), (D), (E), and (F), 325.4, 333(E), (F), (G), (H), and (I), and 406(A)(3)(e), and to repeal R.S. 56:6(27), 8(78) as amended by Acts 1985, No. 541, 322(C)(2), (3), (4), and (8), and 409, all relative to fishing; to provide for the types, sizes, and mesh of nets; to provide for gear; to prohibit the use and possession of certain nets in saltwater areas of the state; to provide exceptions; to provide penalties for violations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. This Act shall be known as and may be referred to as "The Louisiana Marine Resources Conservation Act of 1995".

Section 2. R.S. 56:8(52), (97), (102), (113), and (116), 302.3(D), 305(B)(4) and (10) and (C)(2), 305.5, 320(B)(1) and (3), (F), and (I)(1), 322(C)(5) and (7) and (J), 333(A), (B), and (D), 406(A)(1) and (3)(a), (b), and (d) and (C), and 640.3 are hereby amended and reenacted and R.S.

56:8(66.1), (66.2), 13, 13.1, 68.2, 302.9, 305(B)(14) and (F), 320.1, 320.2, 325.3(C), (D), (E), and (F), and 325.4, 333(E), (F), (G), (H), and (I), and 406(A)(3)(e) are hereby enacted to read as follows:

§8. Definitions

For purposes of this Chapter, the following words and phrases have the meaning ascribed to them in this Section, unless the context clearly indicates a different meaning:

* * *

(52) "Gill net" means any net, of one or more layers, not customarily used for shrimp or menhaden fishing, with a mesh of such size and design as to be used primarily to catch or entangle fish by the gills or other boney projections.

* * *

(66.1) "Mullet strike net" means a gill net that is not more than one thousand two hundred feet in length nor has a mesh size of not less than three and one-half inches stretched and is not anchored or secured to the water bottom or shore and which is actively worked while being used. A mullet strike net shall not be an unattended net as defined in R.S. 56:8(102).

(66.2) "Pompano strike net" means a gill net that is not more than one thousand two hundred feet in length nor has a mesh size of not less than five inches stretched and is not anchored or secured to the water bottom or shore and which is actively worked while being used. A mullet strike net shall not be an unattended net as defined in R.S. 56:8(102).

* * *

(97) "Trammel net" means any device composed of layers of netting material attached to one or more float lines or one or more

weighted bottom lines, with the layers of netting being constructed of fine mesh and of larger mesh so that a fish attempting to pass through the device pushes the smaller mesh through the larger mesh creating a pocket or compartment in which the fish is entrapped, entangled, or restricted.

* * *

(102) "Unattended net" means any net in the water to which the licensee thereof cannot be located within two hundred feet thereof.

* * *

(113) "Federal Fishery Conservation Zone", "federal exclusive economic zone", or "EEZ" means that area which falls within a line conterminous with the seaward boundary of each of the coastal states and a line drawn in such a manner that each point on it is two hundred nautical miles from the baseline from which the territorial sea is measured.

* * *

(116) "Strike net" means any gill net, trammel net, or seine net not anchored or secured to the water bottom or shore and which is actively worked while being used.

* * *

§13. Commercial Fisherman's Economic Assistance Fund

A. There is hereby created the "Commercial Fisherman's Economic Assistance Fund" which shall consist of additional fees that shall not be considered part of the cost of a saltwater recreational fishing license, certified as being paid by a certificate stamped with "Louisiana Marine Resources Conservation Act Stamp" issued to the fisherman at the time of purchase of his saltwater fisherman's license,

which shall be collected pursuant to R.S. 56:13.1; and those funds donated or allocated for the financial assistance of commercial fishermen who are severely impacted by the Louisiana Marine Resources Conservation Act of 1995.

B. Subject to the exception contained in Article VII, Section 9(A) of the Constitution of Louisiana, all funds collected by the commission from every source provided for in Subsection A of this Section shall be paid into the state treasury and shall be credited to the Bond Security and Redemption Fund. Out of the funds remaining in the Bond Security and Redemption Fund after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall, prior to placing such remaining funds in the state general fund, conform to the following:

(1) Pay annually into a special fund created in the state treasury and designated as the Commercial Fisherman's Economic Assistance Fund an amount equal to the total of three dollars collected from each saltwater recreational fisherman per annum paid into the treasury by the commission derived from the fees imposed by R.S. 56:13.1.

(2) The funds in this account shall be used solely for the implementation and administration of R.S. 56:13.1.

§13.1. Commercial Fisherman's Assistance Program

A. It is the purpose of this Section to provide assistance to those commercial fishermen who are displaced or severely financially impacted by the loss of the use of commercial fishing nets due to the enactment of the Louisiana Marine Resources Conservation Act of

1995. Furthermore, it is specifically provided that the intent of the legislature in the creation of this Section is to promote the enhancement of Louisiana's marine resources by the removal of indiscriminate entanglement nets from coastal waters. Among other benefits, this Section will have a direct and positive impact on saltwater fishery resources by providing the financial incentive to the users of these types of formally legal fishing gear to sell the gear back to the state.

B. The Department of Wildlife and Fisheries, with the assistance of the Department of Labor, shall determine the eligibility of applicants for economic assistance under this Section in accordance with the following criteria:

(1) The applicant shall have purchased a saltwater gill net license in at least two of the years 1995, 1994, and 1993 and during any two of those years shall have derived more than fifty percent of his earned income from the capture and sale of seafood species. Proof of such income shall be shown on copies of an unamended, original federal income tax return, including Schedule C of federal form 1040, submitted in accordance with the procedures established by the commission.

(2) The applicant shall not have been convicted of any fishery-related offense that constitutes a class three or greater violation.

(3) The applicant must have been a resident of this state on June 30, 1995.

(4) In order for the applicant to be eligible for the provisions of this Section, his application shall have been submitted to the department not later than October 1, 1995.

C. For those persons who qualify in accordance with Subsection B of this Section, the Department of Wildlife and Fisheries and the Department of Labor, jointly, shall, until July 1, 1997, provide economic assistance for training in approved training programs and for taking courses at state universities and colleges, vocational-technical schools, and community colleges. In addition, the departments shall provide to qualified persons those opportunities provided by the Job Training Partnership Act and any similar programs and provide assistance in finding employment. The departments shall adopt by rule, in accordance with the Administrative Procedure Act, the criteria for providing this economic assistance which shall be viewed as a special legislative appropriation and shall be based on an individual's loss of income due to the enactment of the Louisiana Marine Resources Conservation Act of 1995.

D. Until January 1, 1996, the Department of Wildlife and Fisheries shall purchase from qualified persons those nets that may have been rendered illegal or useless due to the enactment of the Louisiana Marine Resources Conservation Act of 1995. Only those nets that could have been legally fished in the saltwater areas of this state on June 1, 1995, may be purchased. The department shall adopt by rule, in accordance with the Administrative Procedure Act, no later than September 1, 1995, a schedule showing the amount to be paid for each type and size of net. The purchase of nets from persons eligible to sell their nets shall not disqualify that person from applying for a commercial gear license for mullet or for a commercial gear license for rod and reel. However, applicants who receive assistance pursuant to R.S. 56:13(C) shall be disqualified

from receiving any commercial gear license or permit pursuant to R.S. 56:305(B)(14), 325.3, 325.4, and 333.

E. In addition to the fee for a recreational saltwater fishing license provided for in R.S. 56:302.1, there shall be an additional fee of three dollars, collected until June 30, 1998, which shall not be considered part of the cost of a saltwater recreational fishing license, certified as being paid by a certificate stamped with "Louisiana Marine Resources Conservation Act Stamp" issued to the fisherman at the time of purchase of his saltwater fisherman's license. These additional fees shall be used only for the implementation of this Section and for the enforcement of saltwater fishing laws and regulations; however, not less than thirty percent of such fees shall be expended within the enforcement division of the department for the payment of overtime and for additional agents for the enforcement of saltwater fisheries laws and regulations. On an annual basis the department shall determine, based on the number of qualified applicants, how much of the fees deposited to the economic assistance account shall be necessary to fund this Section. All remaining monies shall be divided equally between the enforcement division and the office of management and finance budget unit of the department annually.

* * *

§68.2. Federal enforcement; saltwater fisheries laws

Commissioned law enforcement officers of the United States Department of the Interior and the National Marine Fisheries Service of the United States Department of Commerce shall have the same powers and duties as are provided for regularly commissioned officers of the enforcement division of the Louisiana Department of

Wildlife and Fisheries to enforce any and all saltwater fisheries laws and regulations under the jurisdiction of the department, making arrests, and conducting searches and seizures. Such federal officers shall also be granted the rights, powers, privileges, and immunities provided by this Subpart in the fulfillment of such powers and duties.

* * *

§302.3. Recreational gear license

* * *

D. No recreational fisherman shall use gill nets, trammel nets, strike nets, or seines.

* * *

§302.9. Sale of recreational catch

No person shall sell or barter any fish that has been taken under the authority of a recreational fishing license. Any person who violates this provision shall forfeit his recreational fishing license and shall be forever barred from receiving any recreational fishing license. A subsequent violation of this provision shall be a class four violation, R.S. 56:34.

* * *

§305. Commercial gear license; issuance to certain nonresidents prohibited

* * *

B. Residents shall pay a commercial gear fee as follows:

* * *

(4) Gill nets:

(a) Twenty-five dollars to use any legal number of gill nets in the freshwater areas of the state as defined in R.S. 56:322(A) and (B).

(b) Two hundred fifty dollars per gill net that may only be used in the federal exclusive economic zone (EEZ) as defined in 50 Code of Federal Regulations §620.

(c) Two hundred fifty dollars per mullet strike net that may only be used during the special mullet season defined in R.S. 56:333 or the special spotted sea trout season defined in R.S. 56:325.3(C).

(d) Two hundred fifty dollars per pompano strike net that may only be used during the special pompano season defined in R.S. 56:406 and 325.4.

(e) All commercial gear licenses as provided for in R.S. 56:305(B)(4)(b), (c), and (d) issued to all qualified nonresidents shall be one thousand dollars.

* * *

(10) Trammel nets: twenty-five dollars to use any legal number of trammel nets in the freshwater areas of the state as defined in R.S. 56:322(A) and (B).

* * *

(14) Rod and reel: two hundred fifty dollars to fish in the saltwater areas of the state as defined in R.S. 56:322(A) and (B). The department may issue a saltwater commercial rod and reel gear license to each applicant only if the following conditions have been met:

(a) The applicant must provide positive proof that they held a valid commercial gear license for gill nets during any two years of the years 1995, 1994, and 1993.

(b) The applicant must provide positive proof, in the form of unamended original state and federal income tax returns, including Schedule C of the federal 1040 form, submitted in accordance with

procedures established by the commission, that each applicant has derived more than fifty percent of their earned income from the capture and sale of seafood species in at least two of the three years, 1995, 1994, or 1993.

(c) The applicant shall not have been convicted of any fishery-related violation that constitutes a class three or greater violation.

(d) Each commercial rod and reel fisherman shall report his total monthly commercial take to the department in accordance with the provisions of R.S. 56:345.

* * *

C.

* * *

(2) No commercial gear license shall be issued to any nonresident whose domiciliary state prohibits the use of similar commercial fishing gear.

* * *

F. All persons on board any commercial vessel, from which any commercial rod and reel is used, shall possess a valid commercial fishing license.

* * *

§305.5. Commercial gear license for gill net; permits to be used in the EEZ, dedication and expenditure of funds collected

A. All revenues generated from the issuance of commercial gear licenses for gill nets or permits issued under Subsection B of this Section to be used in the saltwater areas of the federal exclusive economic zone (EEZ) and the freshwater areas of the state shall be deposited to the Wildlife and Fisheries Conservation Fund to be used solely for costs associated with the issuance of commercial fishing

licenses and for the enforcement of laws regulating wildlife, fish, and other aquatic life in the coastal zone of the state.

B. The secretary of the Department of Wildlife and Fisheries shall promulgate rules and regulations for the issuance of permits to persons authorized to possess gill nets, trammel nets, strike nets, and seines within the territorial boundaries of the state while traversing state waters to and from the federal exclusive economic zone. The secretary shall charge a fee of two hundred fifty dollars for each permit issued pursuant to rules and regulations promulgated under the provisions of this Subsection.

* * *

§320. Methods of taking freshwater or saltwater fish

* * *

B.(1) Commercial finfish may be taken with pole, line, the device known as a yo-yo, the device known as a trigger device, handline, with any trotline wherein hooks are not less than twenty-four inches apart, approved slat traps, cans and minnow traps, with legal seines and nets, with bows and arrows, or by any skin diver in salt water or fresh water, when submerged in water and using standard spearing equipment, and by no other means except as provided in Subsection C of this Section. In the saltwater areas of the state as defined in R.S. 56:322(A) and (B), commercial finfish may be taken by means of rod and reel. However, eel may be taken for commercial purposes using eel pots and other legal gear as provided herein. Violation of this Paragraph constitutes a class three violation.

* * *

(3) Crabs may be taken with any legal crab trap, crab dropnet, trawl, trotline, handline, bushline, dip net, or cast net. Dredges shall not be used for the intentional taking of crabs.

* * *

F. Each gill net or trammel net used to take freshwater commercial fish shall be marked with two waterproof tags with the name and license number of the fisherman legibly printed thereon, such tags to be placed at each end of the net. The secretary shall promulgate and adopt rules and regulations to establish a marking system for nets used in freshwater areas of the state sufficient to enable the department's agents to clearly identify unattended nets, as defined in R.S. 56:8(102), including the name and license number of the owner of such nets, and sufficient to enforce all laws relative to such nets. Violation of this Subsection constitutes a class three violation.

* * *

I.(1) It shall be unlawful for any person to knowingly and intentionally use or employ any net to encircle a vessel or to otherwise knowingly and intentionally use or employ any vessel or fishing gear to interfere with the lawful fishing of another.

* * *

§320.1. Use and possession of certain gill nets, trammel nets, strike nets, or seines; prohibited

A. No person shall use, possess, or have in his possession, or have aboard any vessel, a gill net, trammel net, strike net, or seine in the saltwater areas of the state as defined in R.S. 56:322(A) and (B), except as provided in R.S. 56:318 and 320.2.

B. A violation of the provisions of this Section shall constitute a class six violation.

§320.2. Federal exclusive economic zone (EEZ)

A. The possession of gill nets, trammel nets, strike nets, or seines on or aboard any vessel in the saltwater areas of the state is prohibited unless the captain or owner of the vessel has in his immediate possession upon the vessel a permit issued by the department under R.S. 56:305.5(B).

B. While traversing state waters going to and from the waters of the federal exclusive economic zone (EEZ), all gill nets, trammel nets, strike nets, or seines shall remain on board the vessel and shall not be used while in state waters.

C. All vessels fishing in the federal exclusive economic zone (EEZ) shall comply with all applicable federal law and regulations.

D.(1) A violation of this Section shall constitute a class six violation. In addition to any penalty imposed under this Section, any state permit issued under the provisions of R.S. 56:305.5(B) shall be immediately suspended upon a conviction for violation of this Section.

(2) No person who has had his permit suspended under this Section shall reapply for a new permit or be issued a new permit.

E. The commission shall promulgate rules and regulations as may be necessary to effectuate the provisions of this Section.

* * *

§322. Seines or nets; size of mesh; classification as to salt or freshwater; crawfish nets

* * *

C. The following provisions shall apply to saltwater areas:

* * *

(5) Monofilament, multifilament, or other materials.

(a) Except as provided in Subparagraph C(5)(b), the use and possession of trammel nets, gill nets, and seines constructed of monofilament, multifilament, or other materials is prohibited, except as provided in R.S. 56:318 and 320.2.

(b) The nets defined in R.S. 56:66.1 and 66.2 are not prohibited, but shall not be constructed of monofilament.

* * *

(7) Unattended nets. No nets or beam trawls used for taking fish or shrimp from the saltwater areas of the state shall be left unattended, as defined in R.S. 56:8(102), except such legal nets or trawls which are attached to a wharf at a camp. Any net or beam trawl which is seized for a violation of this Paragraph shall be considered abandoned and shall be destroyed immediately.

* * *

J. Violation of any of the provisions of this Section, except for Paragraphs C(5), (6), and (7), constitutes a class four violation. Violation of any of the provisions of Paragraph C(5), (6), or (7) of this Section constitutes a class five violation.

* * *

§325.3. Spotted sea trout; annual quota; red drum commercial taking, possession, or landing prohibited

* * *

C.(1) Notwithstanding any other provision of law to the contrary, the Louisiana Wildlife and Fisheries Commission shall establish the following two seasons for the commercial harvest of

spotted sea trout with a mullet strike net: the first season shall open on Monday, November 20, 1995, and end no later than March 1, 1996; the second season shall open on Monday, November 18, 1996, and end no later than March 1, 1997; however, such seasons shall be closed prior to the dates listed in this Subsection when one million pounds of spotted sea trout are taken commercially within Louisiana waters or landed in Louisiana, whichever occurs first. These two seasons shall exclude the commercial harvest of spotted sea trout with mullet strike nets during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of spotted sea trout pursuant to the provisions of this Section during the period after sunset and before sunrise. After the closure of the seasons provided in this Subsection, only a rod and reel shall be used for the commercial harvest of spotted sea trout, provided the total commercial harvest of spotted sea trout does not exceed the annual one million pound quota established by the commission. The provisions of this Section are subject to quotas and size limits as established by law and rules and regulations of the commission.

(2) The commercial taking of spotted sea trout is prohibited except by special permit issued by the Department of Wildlife and Fisheries at a cost of one hundred dollars for residents of this state and four hundred dollars for those who are nonresidents.

(3) The commercial taking of spotted sea trout during the season by using a mullet strike net in excess of one thousand two hundred feet in length or by using more than one strike net from any vessel at any time is prohibited.

(4) Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social

security number of the owner of the net and the permit number of the permit issued to commercially take spotted sea trout. The department shall not issue any tag to a person who does have a social security number.

D.(1) No person shall be issued a license or permit for the commercial taking of spotted sea trout unless that person meets all of the following requirements:

(a) The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

(b) The person shall provide copies of unamended, original income tax returns, including Schedule C from the federal form 1040, which show that the person derived more than fifty percent of his earned income from the capture and sale of seafood species in any two of the years 1995, 1994, and 1993.

(c) The person shall not have applied for or received any assistance pursuant to R.S. 56:13(C).

(d) The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

(2) The commission shall adopt rules and regulations for the entry of commercial fishermen into the commercial spotted sea trout fishery. Such rules shall include the provisions of Paragraph (1) of this Subsection as minimum requirements.

E. The department shall not issue nor shall any person receive more than one permit or license to commercially take spotted sea trout.

F. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to

commercially take spotted sea trout and shall be forever barred from receiving any permit or license to commercially take spotted sea trout. Any person who, after having been barred from the commercial spotted sea trout fishery pursuant to this Subsection, violates any provision of this Section shall be penalized under the provisions of a Class 7-B violation, R.S. 56:37.

§325.4. Commercial taking of other saltwater finfish; exceptions;
mesh size

A. During the 1995-1996 and the 1996-1997 season for taking mullet and the two seasons for taking spotted sea trout as defined in R.S. 56:325.3(C), all other species of saltwater finfish, including but not limited to black drum, sheepshead, and flounder, may be taken using a pompano strike net, as defined in R.S.56:8(66.2). This gear license and the use of this gear for taking these species shall be prohibited after March 1, 1997. There shall be no commercial taking of finfish pursuant to the provisions of this Section during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no fishing pursuant to the provisions of this Section during the hours after sunset and before sunrise. The provisions of this Section are subject to quotas and size limits as established by law and rules and regulations of the commission.

B.(1) No person shall be issued a license or permit for the commercial taking of underutilized species unless that person meets all of the following requirements:

(a) The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

(b) The person shall provide copies of unamended, original income tax returns, including Schedule C from the federal form 1040, which show that the person derived more than fifty percent of his earned income from the capture and sale of seafood species in any two of the years 1995, 1994, and 1993.

(c) The person shall not have applied for or received any assistance pursuant to R.S. 56:13(C).

(d) The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

(2) The commission shall adopt rules and regulations for the entry of commercial fishermen into the commercial fishery for these species: black drum (also known as puppy drum), sheepshead, and flounder. Such rules shall include the provisions of Paragraph (1) of this Subsection as minimum requirements.

(3) The commercial taking of black drum (also known as puppy drum), sheepshead, and flounder during the season by using a pompano strike net in excess of one thousand two hundred feet in length or by using more than one strike net from any vessel at any time is prohibited.

(4) Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take black drum (also known as puppy drum), sheepshead, and flounder. The department shall not issue any tag to a person who does have a social security number.

C. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take these species and shall be forever barred from

receiving any permit or license to commercially take these species. Any person who, after having been barred from the commercial taking of these species of fish pursuant to this Subsection, violates any provision of this Section shall be penalized under the provisions of a Class 7-B violation, R.S. 56:37.

D.(1) The commission shall make an annual peer reviewed and evaluated report to the legislature no later than March first that contains the following information on black drum, sheepshead, and flounder:

(a) The spawning potential ratio.

(b) A biological condition and profile of the species and stock assessment.

(2) If the report shows that the spawning potential ratio is below thirty percent, the department shall close the season within two weeks for a period of at least one year.

* * *

§333. Mullet

A. The Louisiana Wildlife and Fisheries Commission shall adopt rules to regulate the taking of mullet. Such regulations, except as provided in Subsection B of this Section, shall provide for zones, permits, fees, and other provisions necessary to implement this Section.

B.(1) The season for taking mullet shall begin on the third Monday in October of each year and remain open until the third Monday in January. There shall be no commercial taking of mullet during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. Mullet may not be taken commercially at any time outside of this season. There shall be no fishing pursuant to the provisions

of this Section during the hours after sunset and before sunrise. The provisions of this Section are subject to quotas and size limits as established by law and rules and regulations of the commission.

(2) Mullet may only be taken commercially with a mullet strike net.

(3) The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at a cost of one hundred dollars for residents of this state and four hundred dollars for those who are nonresidents.

(4) The commercial taking of mullet during the season by using a mullet strike net in excess of one thousand two hundred feet in length or by using more than one strike net from any vessel at any time is prohibited.

(5) Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does have a social security number.

* * *

D.(1) No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

(a) The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

(b) The person shall provide copies of unamended, original income tax returns, including Schedule C from the federal form 1040, which show that the person derived more than fifty percent of his

earned income from the capture and sale of seafood species in any two of the years 1995, 1994, and 1993.

(c) The person shall not have applied for or received any assistance pursuant to R.S. 56:13(C).

(2) The commission shall adopt rules and regulations for the entry of commercial fishermen into the commercial mullet fishery. Such rules shall include the provisions of Paragraph (1) of this Subsection as minimum requirements.

E. The department shall not issue nor shall any person receive more than one permit or license to commercially take mullet.

F. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet. Any person who, after having been barred from the commercial mullet fishery pursuant to this Subsection, violates any provision of this Section shall be penalized under the provisions of a Class 7-B violation, R.S. 56:37.

G.(1) The commission shall make an annual peer reviewed and evaluated report to the legislature no later than March first that contains the following information on mullet:

(a) The spawning potential ratio.

(b) A biological condition and profile of the species and stock assessment.

(2) If the report shows that the spawning potential ratio is below thirty percent, the department shall close the season within two weeks for a period of at least one year.

H. The licenses or permits provided for in this Section and in R.S. 56:305(B)(14) as to residents and nonresidents shall not be

transferable from one person to another for a period of three years from August 15, 1995, or until a transfer system is developed by the commission, except in the case of proven physical hardship, as determined within the sole discretion of the commission, and in such event may only be transferred to the spouse, parent/legal guardian, or child/legal dependent of such person. The commission shall by rule establish a system for the transfer of such licenses or permits within a three-year period. In establishing such a system, the commission shall provide that there shall be no financial gain realized by the transfer of such licenses or permits. Any decision of the commission may be appealed de novo to the Nineteenth Judicial District Court.

I. Except as provided in Subsection F of this Section, a violation of the provisions of this Section or of any of the regulations adopted pursuant thereto shall be a class six violation, R.S. 56:36.

* * *

§406. Use of trammel net, seine, gill net, or webbing prohibited in the waters of Breton Islands and Chandeleur Islands; exceptions; penalty

A.(1) To promote the conservation of saltwater fish in the state, the use of any form of trammel net, seine, gill net, strike net, or webbing (ordinarily or historically used for the catching or taking of, or capable of fishing for saltwater finfish) is hereby prohibited in the waters as delineated in Paragraph (2) of this Subsection except as provided in R.S. 56:318 and 320.2.

* * *

(3)(a) It is specifically provided that nothing contained in this Section shall prohibit the use of shrimp trawls or menhaden purse seines within the described area or the use of pompano strike nets

having a mesh size of not less than five inches stretched, and for the purpose of fishing pompano only shall not exceed two thousand four hundred feet in length, during the period from August first through October thirty-first of each year in waters within the described area beyond two thousand five hundred feet from land (excluding islands) and in excess of seven feet in depth.

(b) No person using any pompano strike net in the described area as provided herein shall have in his possession any edible fish, other than pompano. The provisions of this Section are subject to quotas and size limits as established by law and rules and regulations of the commission.

* * *

(d) No person shall fish for pompano in Breton Sound or Chandeleur Sound during the hours after sunset and before sunrise.

(e) Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take pompano. The department shall not issue any tag to a person who does have a social security number.

* * *

C. Violation of any of the provisions of this Section constitutes a class 5-A violation, R.S. 56:35.

* * *

§640.3. Right to fish; legislation; scientific data

A. The legislature recognizes that under the public trust doctrine the marine fishery resources, among other natural resources, are managed by the state in trust for the benefit of all its citizens.

B. The legislature also recognizes that all citizens of the state have a right to fish in and otherwise enjoy marine waters as long as they are in compliance with current licensing requirements. Furthermore, conservation and management decisions shall be fair and equitable to all the people of the state and implemented in such a manner that no individual, corporation, or other entity acquires an excessive share of such rights and privileges. The right to fish does not convey any property right or ownership in the fishery resource, but rather recognizes continued public access to fishing opportunities in marine waters.

C. The legislature further recognizes that the state's marine fishery resources require proper management in order to be sustained biologically and to continually produce a maximum yield of social and economic benefits. To this end, restrictions on legal fishing methods to harvest finfish, shrimp, oysters, crabs, and other marine fish species may become necessary.

D. The department shall recommend the elimination or restriction of any fishing gear currently in use or which may be used in recreational or commercial fisheries in implementing its management responsibilities or in response to any emergency situation. While elimination or restriction may have uneven impacts on different groups of fishermen, the proposed measures should be applicable to all people of the state. In addition to acquiring the best available biological data, the department shall use all practicable means to collect all relevant social and economic data in support of such allocation decisionmaking efforts.

Section 3. R.S. 56:6(27), 8(78) as amended by Acts 1985, No. 541, 322(C)(2), (3), (4), and (8), and 409 are hereby repealed.

Section 4. The provisions of this Act shall not apply to the use or possession of purse seines for the taking of menhaden.

Section 5. The provisions of this Act prohibiting the use and possession of gill nets, trammel nets, strike nets, and seines shall not apply to the harvesting of shrimp, crabs, or oysters in the saltwater areas of the state as defined in R.S. 56:322(A) and (B). The provisions of this Act prohibiting the use and possession of gill nets, trammel nets, strike nets, and seines shall not apply to the harvesting of freshwater species in the freshwater areas of the state as defined in R.S. 56:322(A) and (B).

Section 6. On March 2, 1997, all netting of other than the commercial taking of mullet using a mullet strike net and pompano using a pompano strike net is banned unless the legislature acts to legalize netting in some form.

Section 7. Upon the effective date of this Act, the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission shall undertake independent studies on the impact of strike-net fishing on all saltwater finfish, except red drum, and shall report to the legislature their findings by March 1, 1997, accompanied by recommendations on whether commercial fisheries as provided for in this Act shall be expanded, continued, or eliminated.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

**LOUISIANA SEAFOOD MANAGEMENT
COUNCIL, *et al.*,**

**DOCKET NO. _____
DIV. _____**

VERSUS

**LOUISIANA WILDLIFE AND FISHERIES COMMISSION;
LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES.**

TEMPORARY RESTRAINING ORDER:

IT APPEARING from the verified Petition herein that immediate and irreparable injury, loss, or damage will result to petitioners by virtue of operation of Act 1316 of the 1995 Regular Session before notice can be served and a hearing held on petitioners' application for a preliminary injunction:

IT IS ORDERED that a temporary restraining order issue herein, directed to defendants **LOUISIANA WILDLIFE AND FISHERIES COMMISSION** and the **LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES**, through their attorney, Donald E. Puckett, Esq., at the Commission and Department offices, 2000 Quail Drive, Baton Rouge, La. 70808, restraining, enjoining, and prohibiting the Louisiana Wildlife and Fisheries Commission and the Louisiana Department of Wildlife and Fisheries, its members, officers, agents, employees, and all persons, firms, corporations or anyone acting or claiming to act on their behalf, or in concert with them, from enforcing the provisions of Act 1316 of the 1995 Regular Legislative Session. This restraining order shall expire at the end of ten (10) days from its date, unless extended by this Court prior to its expiration, for good cause shown and the reasons entered of record.

IT IS FURTHER ORDERED that petitioners furnish a security for issuance of this temporary restraining order in the amount of \$ 25,000., by surety bond.

IT IS FURTHER ORDERED that defendants Louisiana Wildlife and Fisheries Commission and the Louisiana Department of Wildlife and Fisheries show cause on the 3/5 day of August, _____, at 2:00 o'clock P.m., why a preliminary injunction, in the form and substance prayed for by petitioners, should not issue, to be effective during the pendency of this proceeding.

On the hearing of this rule, proof may be adduced by verified pleadings, by supporting affidavits, or by proof as in ordinary cases, or by any or all of such methods, at the election of the party offering the proof.

THIS ORDER signed in the City of Baton Rouge, Louisiana, this 15/16 day of Aug, 1995, at the hour of 6:20 P.m.

CERTIFIED TRUE COPY

087390

BY CLERK OF COURT

Jamie Clark
JUDGE, 19TH Judicial District Court

19TH JUDICIAL DISTRICT
EAST BATON ROUGE PARISH, LA.
FILED
AUG 11 AM 11:22
John Devall
CLERK OF COURT

8-09
12:30

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

The Wildlife and Fisheries Commission is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:13.1.B.(1) adopts the rule set forth below. Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to provide economic assistance to those commercial fishermen who are displaced or severely financially impacted by the loss of the use of commercial fishing nets due to its enactment. Initial promulgation of this rule as a declaration of emergency is necessary because the Act establishes a deadline for implementation which predates the earliest date for promulgation of a final rule through non-emergency rule-making procedures. This declaration of emergency shall be effective on August 15, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Wildlife and Fisheries Commission herein establishes procedures for determining proof of income of applicants for economic assistance under R.S. 56:13.1.

An applicant for economic assistance shall have derived more than fifty percent of his earned income from the legal capture and sale of seafood species in at least two of the years 1995, 1994, and 1993.

Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

Joe L. Herring, Secretary

Perry Gisclair, Chairman

**NOTICE OF INTENT
DEPARTMENT OF WILDLIFE AND FISHERIES
WILDLIFE AND FISHERIES COMMISSION**

**TITLE 76
WILDLIFE AND FISHERIES**

PART XVI. COMMERCIAL FISHERMAN'S ASSISTANCE PROGRAM

CHAPTER 1. PROOF OF INCOME

SECTION 101. CRITERIA FOR ESTABLISHING PROOF OF INCOME AND PROCEDURES

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate a rule to establish the procedures for determining proof of income of applicants for economic assistance under the Commercial Fisherman's Assistance Program established by the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

An applicant for economic assistance shall have derived more than fifty percent of his earned income from the legal capture and sale of seafood species in at least two of the years 1995, 1994, and 1993.

Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form

of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:13.1.B(1).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments until 4:30 p.m., October 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, P. O. Box 98000, Baton Rouge, LA 70898-9000.

Perry Gisclair, Chairman

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

The Department of Wildlife and Fisheries is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:13.1.D. adopts the rule set forth below. This declaration of emergency is necessary because Act 1316 of the 1995 Legislature mandates the Department of Wildlife and Fisheries to adopt this rule no later than September 1, 1995, which is the effective date of this declaration of emergency. It shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Until January 1, 1996, the Department of Wildlife and Fisheries shall purchase from qualified persons those commercial fishing nets that have been rendered illegal or useless due to the enactment of the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

In order to qualify, persons must have applied for assistance under the Commercial Fisherman's Assistance Program ~~(specifically, the net buy-back portion of the program)~~ on or before October 1, 1995, and must have met all of the following criteria: 1) must have purchased a saltwater gill net license in at least two of the years 1995, 1994, and 1993; 2) during two of those years shall have derived more than fifty percent of his earned income from the legal capture and sale of seafood species; 3) shall not have been convicted of any fishery-related offense that constitutes a class

three or greater violation; and 4) must have been a bona fide resident of Louisiana on June 30, 1995.

Proof of income shall be provided by the applicant in the form of a copy of his federal tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. The Department of Wildlife and Fisheries can provide the applicant with the appropriate Internal Revenue Service form to request this. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

Beginning August 15, 1995, qualified persons desiring to have their nets purchased by the Department of Wildlife and Fisheries may obtain an application form provided by the department from any departmental district office; the completed form shall include all information necessary to assist in the determination of the eligibility status of the applicant. All requested information regarding size, type and number of nets must be provided. The completed form, along with proof of income as described herein, a

copy of the applicants Louisiana driver's license, and copies of appropriate saltwater gill net licenses, shall be submitted no later than October 1, 1995, to the Commercial License Section of Wildlife and Fisheries located at 2000 Quail Drive, Baton Rouge, LA or by mail to P. O. Box 98000, Baton Rouge, LA 70898. Applicants will be notified by mail as to the disposition of their application.

Only those nets that were legal for use in the saltwater areas of this state on June 1, 1995, and only those nets in usable condition, will be eligible for purchase under the provisions of Act 1316 and this declaration of emergency.

Applicants must have had a gear license issued in their name for at least one of the years 1995, 1994, or 1993, for the specific type of net(s) being presented for purchase. This is in addition to the requirements for having a saltwater gill net license for two of the three years.

Monetary reimbursement for nets to be purchased under this declaration of emergency shall be determined based on the availability of funds collected from the issuance of the Louisiana Marine Resources Conservation Act Stamp. Funds collected through June 30, 1996, will be distributed as follows: thirty percent to the Enforcement Division of the Department in accordance with the Act, and the remaining seventy percent to be made available for the net buy-back portion of the Commercial Fisherman's Assistance Program. Subsequent to June, 1996, seventy percent of the revenue collected from the LMRC Stamp will be used for the remainder of the

Commercial Fisherman's Assistance Program as defined in Act 1316,
R.S. 56:13.1.C.

The disbursement of available funds for nets shall be calculated on a pro rata basis to accommodate the number of qualified applicants at a rate not to exceed 50% of the average cost of each qualifying net. The following is a schedule of the maximum amount to be paid for each type and size of net based upon fifty percent of the average standard 1995 catalog prices not including sales tax, shipping charges, or options. Actual prices to be paid will be limited by the number of qualifying nets and by the amount of revenue collected .

<u>Mesh Depth</u>	<u>Gill Nets</u>	<u>Seines</u>
	<u>Price per foot</u>	<u>Price per foot</u>
4' - 6'	\$.25	\$.76
over 6' - 8'	\$.30	\$.80
over 8' - 10'	\$.38	\$.87
over 10' - 12'	\$.42	\$.92
over 12' - 14'	\$.44	\$.96
over 14'	\$.53	\$ 1.02

<u>Trammel Nets</u>	
	<u>Price per foot</u>
4' - 6'	\$.38
over 6' - 8'	\$.40
over 8' - 10'	\$.43
over 10'	\$.45

<u>Trawls</u>	
Complete	\$11.22 per foot of trawl width
Trawl only	\$ 6.84 per foot of trawl width

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:305.B.(14)(b) adopts the rule set forth below. Initial promulgation of this rule as a declaration of emergency is necessary because Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to implement the Act effective August 15, 1995, which is the effective date of the declaration of emergency. It remains in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Wildlife and Fisheries Commission herein establishes procedures relative to the proof of income of applicants for a saltwater commercial rod and reel gear license.

Each applicant shall have derived more than fifty percent of his earned income from the legal capture and sale of seafood species in at least two of the three years, 1995, 1994, and 1993.

Proof of income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service and a copy of his state tax return which has been certified by the Louisiana Department of Revenue and Taxation. In the event that the certified copies of the tax returns, including Schedule C,

do not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

Joe L. Herring, Secretary

Perry Gisclair, Chairman

**NOTICE OF INTENT
DEPARTMENT OF WILDLIFE AND FISHERIES
WILDLIFE AND FISHERIES COMMISSION**

**TITLE 76
WILDLIFE AND FISHERIES**

PART VII. FISH AND OTHER AQUATIC LIFE

CHAPTER 4. LICENSE AND LICENSE FEES

SECTION 405. SALTWATER COMMERCIAL ROD AND REEL LICENSE; PROOF OF INCOME

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate a rule to establish the procedures relative to the proof of income criteria for applicants for a saltwater commercial rod and reel license in accordance with the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

Each applicant shall have derived more than fifty percent of his earned income from the legal capture and sale of seafood species in at least two of the three years, 1995, 1994, and 1993.

Proof of income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service and a copy of his state tax return which has been certified by the Louisiana Department of Revenue and Taxation. In the event that the certified copies of the tax returns, including Schedule C, do not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said

documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

AUTHORITY NOTE: Promulgated in accordance with 56:305.B.(14)(b).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments until 4:30 p.m., October 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, P. O. Box 98000, Baton Rouge, LA 70898-9000.

Perry Gisclair, Chairman

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:305.5.B. and R.S. 56:320.2.E. adopts the rule set forth below. Promulgation of this rule as a declaration of emergency is necessary because Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to implement the Act effective August 15, 1995, which is the effective date of this declaration of emergency. It shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Wildlife and Fisheries Commission and the Department of Wildlife and Fisheries hereby establish rules and regulations for the issuance of permits to persons authorized to possess gill nets, trammel nets, strike nets, and seines within the territorial boundaries of the state while traversing state waters to and from the federal exclusive economic zone, and to carry out the provisions of R.S. 320.1.

The Department of Wildlife and Fisheries is authorized to issue a Traversing Permit upon application to its Commercial License Section at the Baton Rouge office for a fee of \$250 for each permit. Application for permits must be made in person.

The Traversing Permit shall be valid for the calendar year of issue (January 1st through December 31st).

The captain or vessel owner shall only be required to have one Traversing Permit for any number of gill nets, trammel nets, strike nets, or seines. Each gear used in the waters of the federal exclusive economic zone (EEZ) shall be properly licensed. For licensing purposes, trammel nets, strike nets, and seines are required to be licensed as gill nets when used in the EEZ.

The possession of gill nets, trammel nets, strike nets, or seines on or aboard any vessel in the saltwater areas of the state is prohibited unless the captain or owner of the vessel has in his immediate possession upon the vessel a Traversing Permit as well as any other licenses as required by law.

While traversing state waters going to and from the waters of the federal exclusive economic zone, all gill nets, trammel nets, strike nets, and seines shall remain on board the vessel and shall not be used in state waters.

Harvest and possession of all fish pursuant to this permit is subject to all rules established by the Wildlife and Fisheries Commission relative to seasons, size limits, and quotas.

Vessels containing or transporting prohibited nets shall proceed as directly, continuously, and expeditiously as possible.

Permittees will be required to abide by all conditions as specified on the permits.

Joe L. Herring, Secretary

Perry Gisclair, Chairman

**NOTICE OF INTENT
DEPARTMENT OF WILDLIFE AND FISHERIES
WILDLIFE AND FISHERIES COMMISSION**

**TITLE 76
WILDLIFE AND FISHERIES**

PART VII. FISH AND OTHER AQUATIC LIFE

CHAPTER 4. LICENSE AND LICENSE FEES

SECTION 403. TRAVERSING PERMIT

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate a rule to establish the rules and regulations for the issuance of Traversing Permits to persons authorized to possess gill nets, trammel nets, strike nets, and seines within the territorial boundaries of the state while traversing state waters to and from the federal exclusive economic zone.

The Department of Wildlife and Fisheries is authorized to issue a Traversing Permit upon application to its Commercial License Section at the Baton Rouge office for a fee of \$250 for each permit. Application for permits must be made in person.

The Traversing Permit shall be valid for the calendar year of issue (January 1st through December 31st).

The captain or vessel owner shall only be required to have one Traversing Permit for any number of gill nets, trammel nets, strike nets, or seines. Each gear used in the waters of the federal exclusive economic zone (EEZ) shall be properly licensed. For licensing purposes, trammel nets, strike nets, and seines are required to be licensed as gill nets when used in the EEZ. The possession of gill nets, trammel nets, strike nets, or seines on or aboard any vessel in the saltwater areas of the state is prohibited

unless the captain or owner of the vessel has in his immediate possession upon the vessel a Traversing Permit as well as any other licenses as required by law.

While traversing state waters going to and from the waters of the federal exclusive economic zone, all gill nets, trammel nets, strike nets, and seines shall remain on board the vessel and shall not be used in state waters.

Harvest and possession of all fish pursuant to this permit is subject to all rules established by the Wildlife and Fisheries Commission relative to seasons, size limits, and quotas.

Vessels containing or transporting prohibited nets shall proceed as directly, continuously, and expeditiously as possible.

Permittees will be required to abide by all conditions as specified on the permits.

AUTHORITY NOTE: Promulgated in accordance with 56:305.B. and 56:320.2.E.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments until 4:30 p.m., October 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, P. O. Box 98000, Baton Rouge, LA 70898-9000.

Perry Gisclair, Chairman

RULE
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission hereby adopts a Rule to Govern Traversing/EEZ Permit.

Traversing /EEZ Permit

A. Traversing/EEZ Permit Regulations

1. Possession of a permit does not exempt the bearer from laws or regulations except for those which may be specifically exempted by the permit. Any violation of a fish law shall constitute a violation of the permit.
2. Information gained by the department through the issuance of a permit is not privileged and will be disseminated to the public.
3. The bearer of a permit shall report monthly the catch and effort under the permit, even when catch or effort is zero. This report shall contain total catch, effort, and other parameters which may be required by the department. A report shall be received by the Enforcement Division no later than 30 days following the last day of each month.
4. The permittee shall have the permit in possession at all times when using or transporting permitted gear. Permit holder shall be on board permitted vessel when operating under conditions of permit. This permit is not transferrable.
5. When permitted gear is on board permitted vessel or in possession of permittee, permittee and vessel are assumed to be operating under conditions of the permit. No gear other than permitted gear may be on board or in possession of permittee.
6. Any violation of the conditions of the permit or violation of any fisheries regulation shall be punishable as defined by Act 1316 of Louisiana Legislature.
7. All permits expire December 31 following the date of issuance. All permits shall be returned to the department by January 31 following expiration.
8. The permitted boat used in the program shall have distinguishing signs so that it may be identified. The signs shall have the letters EEZ and assigned numbers printed on them in at least ten inch high letters and numbers on a contrasting background in

block style so as to be visible and legible from low flying aircraft and from any vessel in the immediate vicinity. The assigned numbers shall be situated on both sides of the vessel and atop the vessel.

9. The department reserves the right to observe the operations taking place under the permit and at its request the department may assign aboard any permitted vessel an enforcement agent as an observer.
10. All permittees shall notify the department 4 hours of leaving port to traverse or fish under permitted conditions and immediately upon returning from permitted trip. The department shall be notified by calling a designated phone number.
11. When quotas have been met or seasons have been closed no fish affected can be possessed with commercial gear on board while traveling state waters.
12. The permittee must report to the Department the buyer's name which will purchase the fish product at the time the permittee informs the Department of their return from each EEZ trip.
13. Vessels operating under this permit shall proceed as directly, continuously and expeditiously as possible to and from EEZ.
14. By signature of permittee, applicant has read and understands the regulations and conditions attached to this permit. A copy of permittee's signature, upon the conditions of the permit, shall accompany the permittee while traversing state waters with the commercial equipment regulated by the permit.

RESOLUTION

RULES FOR HARVEST OF MULLET

WHEREAS, the existing rule governing the harvest of mullet was promulgated in January, 1995, and

WHEREAS, Act 1316³³³ of the 1995 Regular Legislative Session amends R.S.56:408, thereby directing changes in the seasons, gears, and licenses and permit requirements for commercial harvest of mullet, and

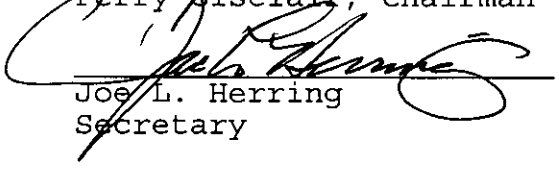
WHEREAS, emergency procedures must be utilized in order to have the necessary rules in place upon the effective date of the legislation,

THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission does hereby establish emergency rules and promulgate a notice of intent to amend the published regulations concerning the harvest of mullet.

BE IT FURTHER RESOLVED, that the complete copy of the Declaration of Emergency, Notice of Intent and proposed rule are attached to and made part of this resolution.



Perry Gislair, Chairman



Joe L. Herring
Secretary

**Declaration of Emergency
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(25)(a), 56:326.3, and 56:333 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on ~~August~~^{Sept. 1} 15, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

S. 343. Rules for Harvest of Mullet

A. Seasons

1. The season for the commercial taking of mullet shall

begin at sunrise of the third Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially at any time outside of this season.

2. Commercial harvest of mullet shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of mullet during the period after sunset and before sunrise.

B. Commercial Taking

1. Mullet may only be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of one thousand two hundred feet in length or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Limits: During the season, there shall be no

daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits: The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

E. Permits

1. The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of one hundred dollars for residents of this state and four hundred dollars for those who are nonresidents.

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form

1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet.

4. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet.

5. Each Mullet Permit holder shall, on or before the tenth of each month of the open season, submit an

information return to the department on forms provided or approved for this purpose, including the pounds of mullet taken commercially during the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

F. General Provisions : Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

G. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

NOTICE OF INTENT
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule (Title 76, Part VII, Ch. 3, Sec. 343) to amend the regulations governing the commercial harvest of mullet. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included R.S. 56:6(25)(a); 56:326.3; 56:333; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

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G. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)a), 56:325.1, 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992) amended L.R. 21:___ (January, 1995), amended L.R. 22:___ (_____, 1996).

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

RULE
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby promulgate a Rule (Title 76, Part VII, Ch. 3, Sec. 343) to amend the regulations governing the commercial harvest of mullet. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included R.S. 56:6(25)(a); 56:326.3; 56:333; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

S. 343. Rules for Harvest of Mullet

A. Seasons

1. The season for the commercial taking of mullet shall begin at sunrise of the third Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially at any time outside of this season.

2. Commercial harvest of mullet shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on

Sunday. There shall be no commercial taking of mullet during the period after sunset and before sunrise.

B. Commercial Taking

1. Mullet may only be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of one thousand two hundred feet in length or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Limits: During the season, there shall be no daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits: The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

E. Permits

1. The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of one hundred dollars for residents of this state and four hundred dollars for those who are nonresidents.

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

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b. The person shall show that he derived more than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA

in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet.

4. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet.

5. Each Mullet Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of mullet taken commercially during the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

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possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

G. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)a), 56:325.1, 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992) amended L.R. 21:___ (January, 1995), amended L.R. 22:___ (_____, 1996).

RESOLUTION

RULES FOR HARVEST OF MULLET

WHEREAS, the existing rule governing the harvest of mullet was promulgated in January, 1995, and

WHEREAS, Act 1316 of the 1995 Regular Legislative Session amends R.S.56:406, thereby directing changes in the seasons, gears, and licenses and permit requirements for commercial harvest of mullet, and

WHEREAS, emergency procedures must be utilized in order to have the necessary rules in place upon the effective date of the legislation,

THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission does hereby establish emergency rules and promulgate a notice of intent to amend the published regulations concerning the harvest of mullet.

BE IT FURTHER RESOLVED, that the complete copy of the Declaration of Emergency, Notice of Intent and proposed rule are attached to and made part of this resolution.

Perry Gisclair, Chairman

Joe L. Herring
Secretary

Declaration of Emergency
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(25)(a), 56:326.3, and 56:333 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on August 15, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

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G. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

NOTICE OF INTENT
Department of Wildlife and Fisheries
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The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule (Title 76, Part VII, Ch. 3, Sec. 343) to amend the regulations governing the commercial harvest of mullet. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included R.S. 56:6(25)(a); 56:326.3; 56:333; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

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Interested persons may submit comments relative to the proposed Rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

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Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

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Wildlife and Fisheries

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B. Commercial Taking

1. Mullet may only be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of one thousand two hundred feet in length or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Limits: During the season, there shall be no daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits: The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

E. Permits

1. The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of one hundred dollars for residents of this state and four hundred dollars for those who are nonresidents.

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA

in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet.

4. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet.

5. Each Mullet Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of mullet taken commercially during the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

F. General Provisions : Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in

possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

G. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)a), 56:325.1, 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992) amended L.R. 21:___ (January, 1995), amended L.R. 22:___ (_____, 1996).

RESOLUTION

RULES FOR HARVEST OF SPOTTED SEATROUT

WHEREAS, the existing rule governing the harvest of spotted seatrout was promulgated in February, 1992, and

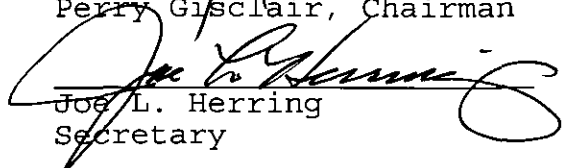
WHEREAS, Act 1316 of the 1995 Regular Legislative Session amends R.S.56:406, ³²⁵thereby directing changes in the seasons, gears, and licenses and permit requirements for commercial harvest of spotted seatrout, and

WHEREAS, emergency procedures must be utilized in order to have the necessary rules in place upon the effective date of the legislation,

THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission does hereby establish emergency rules and promulgate a notice of intent to amend the published regulations concerning the harvest of spotted seatrout.

BE IT FURTHER RESOLVED, that the complete copy of the Declaration of Emergency, Notice of Intent and proposed rule are attached to and made part of this resolution.


Perry Gisclair, Chairman


Joe L. Herring
Secretary

Declaration of Emergency
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(10), 56:6(25)(a), 56:325.3, 56:326.3, and 56:325.3 as *amended by* ~~described in~~ Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation act of 1995 for an effective date of ~~August 15~~^{ok}, 1995. This emergency rule shall be effective on ~~August 15~~^{September 1}, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

S. 341. Spotted Seatrout Management Measures

A. Commercial Season; Quota; Permits

1. The season for the commercial taking of spotted seatrout

the Third Monday in November of

shall begin at sunrise on ~~September 15~~ of each year, and close at sunset on May 1 the following year or when the quota has been reached or on the date projected by the staff of the department of wildlife and fisheries that the quota will be reached, whichever occurs first.

2. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial quota for spotted seatrout shall be one million pounds for each fishing season.

4. Permits

a. The commercial taking of spotted seatrout is prohibited except by special non-transferable Spotted Seatrout Permit issued by the Department of Wildlife and Fisheries at the cost of one hundred dollars for residents of this state and four hundred dollars for those who are nonresidents.

b. No person shall be issued a license or permit for the commercial taking of spotted seatrout unless that person meets all of the following requirements:

(i). The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

(ii). The person shall show that he derived more

than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

(iii). The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

(iv). The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

c. No person shall receive more than one permit or license to commercially take spotted seatrout.

d. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take spotted seatrout and shall be forever barred from receiving any permit or license to commercially take spotted seatrout.

5. Each Spotted Seatrout Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of spotted seatrout taken commercially during the preceding month, and the commercial dealers to whom these were sold, if sold. Monthly reports shall be filed, even if catch or effort is zero.

B. Commercial Taking of Spotted Seatrout Using Mullet Strike Nets, Seasons

1. There shall be two seasons for the commercial harvest of spotted seatrout with a mullet strike net: the first season shall open on Monday, November 20, 1995, and end no later than March 1, 1996; the second season shall open on Monday, November 18, 1996, and end no later than March 1, 1997. Such seasons shall be closed prior to the dates listed in this paragraph if (a) one million pounds of spotted seatrout have been taken commercially during a fishing season, or (b) on the date projected by the staff of the department of wildlife and

fisheries that the quota will be reached, whichever occurs first. The closure shall not take effect for at least seventy-two (72) hours after notice to the public.

2. During these two seasons the commercial harvest of spotted seatrout with mullet strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial taking of spotted seatrout by using a mullet strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one mullet strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take spotted seatrout. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Taking of Spotted Seatrout Using Other Commercial Gear

1. There shall be no commercial taking of spotted seatrout

during the period after sunset and before sunrise.

2. During the 1995-1996 season for harvest of spotted seatrout with a mullet strike net, all other legal methods of harvest may also be used until March 1, 1996. After that date, only commercial rod and reel may be used for the commercial harvest of spotted seatrout, provided that the commercial harvest of spotted seatrout does not exceed the commercial quota.

3. From September 15, 1996 until November 18, 1996, only commercial rod and reel may be used for the commercial harvest of spotted seatrout provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

3 4. During the 1996-1997 season for commercial harvest of spotted seatrout with a mullet strike net, only a mullet strike net or a commercial rod and reel may be used for the commercial harvest of spotted seatrout provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

4 5. Following the closure of the 1996-1997 season for the harvest of spotted seatrout with a mullet strike net, only a commercial rod and reel shall be used for the commercial harvest of spotted seatrout, provided the commercial harvest

of spotted seatrout does not exceed the commercial quota.

D. General Provisions

Effective with the closure of the commercial season for spotted seatrout, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of spotted seatrout on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of spotted seatrout legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

NOTICE OF INTENT
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule (Title 76, Part VII, Ch. 3, Sec. 341) to amend the regulations governing the commercial harvest of spotted seatrout. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included in Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a); 56:325.3; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

S. 341. Spotted Seatrout Management Measures

A. Commercial Season; Quota; Permits

1. The season for the commercial taking of spotted seatrout shall begin at sunrise on September 15 of each year, and close at sunset on May 1 the following year or when the quota has been reached or on the date projected by the staff of the department of wildlife and fisheries that the quota will be reached, whichever occurs first.

2. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial quota for spotted seatrout shall be one million pounds for each fishing season.

4. Permits

a. The commercial taking of spotted seatrout is prohibited except by special non-transferable Spotted Seatrout Permit issued by the Department of Wildlife and Fisheries at the cost of one hundred dollars for residents of this state and four hundred dollars for those who are nonresidents.

b. No person shall be issued a license or permit for the commercial taking of spotted seatrout unless that person meets all of the following requirements:

(i). The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

(ii). The person shall show that he derived more than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of

the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

(iii). The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

(iv). The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

c. No person shall receive more than one permit or license to commercially take spotted seatrout.

d. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take spotted seatrout and shall be forever barred from receiving any permit or license to commercially take spotted seatrout.

5. Each Spotted Seatrout Permit holder shall, on or before the tenth of each month of the open season, submit an

information return to the department on forms provided or approved for this purpose, including the pounds of spotted seatrout taken commercially during the preceding month, and the commercial dealers to whom these were sold, if sold. Monthly reports shall be filed, even if catch or effort is zero.

B. Commercial Taking of Spotted Seatrout Using Mullet Strike Nets, Seasons

1. There shall be two seasons for the commercial harvest of spotted seatrout with a mullet strike net: the first season shall open on Monday, November 20, 1995, and end no later than March 1, 1996; the second season shall open on Monday, November 18, 1996, and end no later than March 1, 1997. Such seasons shall be closed prior to the dates listed in this paragraph if (a) one million pounds of spotted seatrout have been taken commercially during a fishing season, or (b) on the date projected by the staff of the department of wildlife and fisheries that the quota will be reached, whichever occurs first. The closure shall not take effect for at least seventy-two (72) hours after notice to the public.

2. During these two seasons the commercial harvest of spotted seatrout with mullet strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial taking of spotted seatrout by using a mullet strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one mullet strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take spotted seatrout. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Taking of Spotted Seatrout Using Other Commercial Gear

1. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

2. During the 1995-1996 season for harvest of spotted seatrout with a mullet strike net, all other legal methods of harvest may also be used until March 1, 1996. After that date, only commercial rod and reel may be used for the commercial harvest of spotted seatrout, provided that the commercial harvest of spotted seatrout does not exceed the commercial quota.

3. From September 15, 1996 until November 18, 1996, only

commercial rod and reel may be used for the commercial harvest of spotted seatrout provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

4. During the 1996-1997 season for commercial harvest of spotted seatrout with a mullet strike net, only a mullet strike net or a commercial rod and reel may be used for the commercial harvest of spotted seatrout provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

5. Following the closure of the 1996-1997 season for the harvest of spotted seatrout with a mullet strike net, only a commercial rod and reel shall be used for the commercial harvest of spotted seatrout, provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

D. General Provisions

Effective with the closure of the commercial season for spotted seatrout, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of spotted seatrout on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of spotted seatrout legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly

licensed in accordance with R.S. 56:303 or R.S.306.

AUTHORITY NOTE: Promulgated in accordance with Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a); 56:325.3; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992), amended, Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, L.R.22:____ (____, 1996).

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

Rule
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby promulgate a Rule (Title 76, Part VII, Ch. 3, Sec. 341) to amend the regulations governing the commercial harvest of spotted seatrout. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included in Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a); 56:325.3; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

S. 341. Spotted Seatrout Management Measures

A. Commercial Season; Quota; Permits

1. The season for the commercial taking of spotted seatrout shall begin at sunrise on September 15 of each year, and close at sunset on May 1 the following year or when the quota has been reached or on the date projected by the staff of the department of wildlife and fisheries that the quota will be reached, whichever occurs first.

2. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial quota for spotted seatrout shall be one million pounds for each fishing season.

4. Permits

a. The commercial taking of spotted seatrout is prohibited except by special non-transferable Spotted Seatrout Permit issued by the Department of Wildlife and Fisheries at the cost of one hundred dollars for residents of this state and four hundred dollars for those who are nonresidents.

b. No person shall be issued a license or permit for the commercial taking of spotted seatrout unless that person meets all of the following requirements:

(i). The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

(ii). The person shall show that he derived more than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of

the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

(iii). The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

(iv). The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

c. No person shall receive more than one permit or license to commercially take spotted seatrout.

d. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take spotted seatrout and shall be forever barred from receiving any permit or license to commercially take spotted seatrout.

5. Each Spotted Seatrout Permit holder shall, on or before the tenth of each month of the open season, submit an

information return to the department on forms provided or approved for this purpose, including the pounds of spotted seatrout taken commercially during the preceding month, and the commercial dealers to whom these were sold, if sold. Monthly reports shall be filed, even if catch or effort is zero.

B. Commercial Taking of Spotted Seatrout Using Mullet Strike Nets, Seasons

1. There shall be two seasons for the commercial harvest of spotted seatrout with a mullet strike net: the first season shall open on Monday, November 20, 1995, and end no later than March 1, 1996; the second season shall open on Monday, November 18, 1996, and end no later than March 1, 1997. Such seasons shall be closed prior to the dates listed in this paragraph if (a) one million pounds of spotted seatrout have been taken commercially during a fishing season, or (b) on the date projected by the staff of the department of wildlife and fisheries that the quota will be reached, whichever occurs first. The closure shall not take effect for at least seventy-two (72) hours after notice to the public.

2. During these two seasons the commercial harvest of spotted seatrout with mullet strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial taking of spotted seatrout by using a mullet strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one mullet strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take spotted seatrout. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Taking of Spotted Seatrout Using Other Commercial Gear

1. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

2. During the 1995-1996 season for harvest of spotted seatrout with a mullet strike net, all other legal methods of harvest may also be used until March 1, 1996. After that date, only commercial rod and reel may be used for the commercial harvest of spotted seatrout, provided that the commercial harvest of spotted seatrout does not exceed the commercial quota.

3. From September 15, 1996 until November 18, 1996, only

commercial rod and reel may be used for the commercial harvest of spotted seatrout provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

4. During the 1996-1997 season for commercial harvest of spotted seatrout with a mullet strike net, only a mullet strike net or a commercial rod and reel may be used for the commercial harvest of spotted seatrout provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

5. Following the closure of the 1996-1997 season for the harvest of spotted seatrout with a mullet strike net, only a commercial rod and reel shall be used for the commercial harvest of spotted seatrout, provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

D. General Provisions

Effective with the closure of the commercial season for spotted seatrout, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of spotted seatrout on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of spotted seatrout legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly

licensed in accordance with R.S. 56:303 or R.S.306.

AUTHORITY NOTE: Promulgated in accordance with Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a); 56:325.3; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992), amended, Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, L.R.22:____ (____, 1996).

RESOLUTION

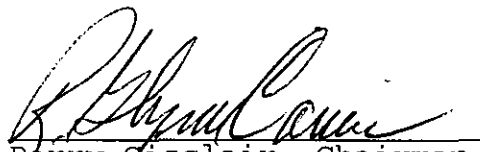
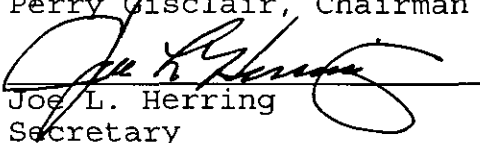
RULES FOR HARVEST OF BLACK DRUM, SHEEPSHEAD AND FLOUNDER WITH
POMPANO STRIKE NETS

WHEREAS, Act 1316 of the 1995 Regular Legislative Session enacts R.S.56:325.4, thereby directing changes in the seasons, gears, and licenses and permit requirements for commercial harvest of black drum, sheepshead and flounder, and other species of saltwater finfish, other than spotted seatrout, red drum, and mullet, and

WHEREAS, emergency procedures must be utilized in order to have the necessary rules in place upon the effective date of the legislation,

THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission does hereby establish emergency rules and promulgate a notice of intent to establish permanent regulations concerning the harvest of black drum, sheepshead and flounder with pompano strike nets

BE IT FURTHER RESOLVED, that the complete copy of the Declaration of Emergency, Notice of Intent and proposed rule are attached to and made part of this resolution.


Perry Gisclair, Chairman

Joe L. Herring
Secretary

Declaration of Emergency
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(10), 56:6(25)(a), 56:326.1, 56:326.3, and 56:325.4 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on ~~August 15~~ ^{Sept. 1}, 1995, and shall remain in effect ~~for~~ ^{for} the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Wildlife and Fisheries Commission herein establishes rule and regulations governing the harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

S. 349. Rules for Harvest of Black Drum, Sheepshead, Flounder and

Other Saltwater Species using Pompano Strike Nets.

A. Drum/Sheepshead Strike Net Permit

1. The commercial taking of black drum, sheepshead and flounder with pompano strike nets is prohibited except by special permit issued by the Department of Wildlife and Fisheries, hereby designated as a Drum/Sheepshead Strike Net Permit. This permit is required in addition to the Pompano Strike Net License required by law.

2. No person shall be issued a Drum/Sheepshead Strike Net Permit unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the

income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

d. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

3. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any Drum/Sheepshead Strike Net Permit and shall be forever barred from receiving any such permit in the future.

B. Commercial Taking of Saltwater Finfish using Pompano Strike Nets

1. There shall be two seasons for the commercial harvest of all species of saltwater finfish (other than mullet, spotted seatrout and red drum) with a pompano strike net: the first season shall open on Monday October 16, 1995, and end with the closure of the mullet strike net season, but no later than March 1, 1996; the second season shall open on Monday October

21, 1996, and end with the closure of the mullet strike net season, but no later than March 1, 1997. A season for the taking of these species shall be closed prior to the dates listed in this paragraph if the commercial quota for that species has been taken, or on the date projected by the staff of the department of wildlife and fisheries that a quota will be reached, whichever occurs first. The closure shall not take effect for at least seventy-two (72) hours after notice to public.

2. During these two seasons the commercial harvest of these species with pompano strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of these species with pompano strike nets during the period after sunset and before sunrise.

3. The commercial taking of these species by using a pompano strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one pompano strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the Drum/Sheepshead Strike Net Permit number, if applicable. The

department shall not issue any tag to a person who does not have a social security number.

5. Each Drum/Sheepshead Strike Net Permit holder shall on or before the tenth of each month file a return to the department on forms provided or approved for the purpose, the pounds of black drum from sixteen (16) to twenty-seven (27) inches, the number of black drum over twenty-seven (27) inches, the pounds of sheepshead and the pounds of flounder taken commercially during the preceding month, the gears used for harvest, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

C. General Provisions

Effective with the closure of a commercial season for black drum, sheepshead, or flounder, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of that species on the waters of the state with pompano strike nets in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of fish legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

Notice of Intent
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule (Title 76, Part VII, Ch. 3, Sec. 349) to establish regulations governing the commercial harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included in R.S. 56:6(10); 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

S. 349. Rules for Harvest of Black Drum, Sheepshead, Flounder and Other Saltwater Species using Pompano Strike Nets.

A. Drum/Sheepshead Strike Net Permit

1. The commercial taking of black drum, sheepshead and flounder with pompano strike nets is prohibited except by special permit issued by the Department of Wildlife and Fisheries, hereby designated as a Drum/Sheepshead Strike Net

Permit. This permit is required in addition to the Pompano Strike Net License required by law.

2. No person shall be issued a Drum/Sheepshead Strike Net Permit unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

d. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

3. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any Drum/Sheepshead Strike Net Permit and shall be forever barred from receiving any such permit in the future.

B. Commercial Taking of Saltwater Finfish using Pompano Strike Nets

1. There shall be two seasons for the commercial harvest of all species of saltwater finfish (other than mullet, spotted seatrout and red drum) with a pompano strike net: the first season shall open on Monday October 16, 1995, and end with the closure of the mullet strike net season, but no later than March 1, 1996; the second season shall open on Monday October 21, 1996, and end with the closure of the mullet strike net season, but no later than March 1, 1997. A season for the taking of these species shall be closed prior to the dates listed in this paragraph if the commercial quota for that species has been taken, or on the date projected by the staff of the department of wildlife and fisheries that a quota will be reached, whichever occurs first. The closure shall not take effect for at least seventy-two (72) hours after notice

to public.

2. During these two seasons the commercial harvest of these species with pompano strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of these species with pompano strike nets during the period after sunset and before sunrise.

3. The commercial taking of these species by using a pompano strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one pompano strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the Drum/Sheepshead Strike Net Permit number, if applicable. The department shall not issue any tag to a person who does not have a social security number.

5. Each Drum/Sheepshead Strike Net Permit holder shall on or before the tenth of each month file a return to the department on forms provided or approved for the purpose, the pounds of black drum from sixteen (16) to twenty-seven (27) inches, the

number of black drum over twenty-seven (27) inches, the pounds of sheepshead and the pounds of flounder taken commercially during the preceding month, the gears used for harvest, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

C. General Provisions

Effective with the closure of a commercial season for black drum, sheepshead, or flounder, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of that species on the waters of the state with pompano strike nets in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of fish legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

AUTHORITY NOTE: Promulgated in accordance with 56:6(10), 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:698 (August 1990); amended L.R.22:____ (____ 1996).

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the

Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

RULE
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby promulgate a Rule (Title 76, Part VII, Ch. 3, Sec. 349) to establish regulations governing the commercial harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included in R.S. 56:6(10); 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

S. 349. Rules for Harvest of Black Drum, Sheepshead, Flounder and Other Saltwater Species using Pompano Strike Nets.

A. Drum/Sheepshead Strike Net Permit

1. The commercial taking of black drum, sheepshead and flounder with pompano strike nets is prohibited except by special permit issued by the Department of Wildlife and Fisheries, hereby designated as a Drum/Sheepshead Strike Net

Permit. This permit is required in addition to the Pompano Strike Net License required by law.

2. No person shall be issued a Drum/Sheepshead Strike Net Permit unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

d. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

3. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any Drum/Sheepshead Strike Net Permit and shall be forever barred from receiving any such permit in the future.

B. Commercial Taking of Saltwater Finfish using Pompano Strike Nets

1. There shall be two seasons for the commercial harvest of all species of saltwater finfish (other than mullet, spotted seatrout and red drum) with a pompano strike net: the first season shall open on Monday October 16, 1995, and end with the closure of the mullet strike net season, but no later than March 1, 1996; the second season shall open on Monday October 21, 1996, and end with the closure of the mullet strike net season, but no later than March 1, 1997. A season for the taking of these species shall be closed prior to the dates listed in this paragraph if the commercial quota for that species has been taken, or on the date projected by the staff of the department of wildlife and fisheries that a quota will be reached, whichever occurs first. The closure shall not take effect for at least seventy-two (72) hours after notice

to public.

2. During these two seasons the commercial harvest of these species with pompano strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of these species with pompano strike nets during the period after sunset and before sunrise.

3. The commercial taking of these species by using a pompano strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one pompano strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the Drum/Sheepshead Strike Net Permit number, if applicable. The department shall not issue any tag to a person who does not have a social security number.

5. Each Drum/Sheepshead Strike Net Permit holder shall on or before the tenth of each month file a return to the department on forms provided or approved for the purpose, the pounds of black drum from sixteen (16) to twenty-seven (27) inches, the

number of black drum over twenty-seven (27) inches, the pounds of sheepshead and the pounds of flounder taken commercially during the preceding month, the gears used for harvest, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

C. General Provisions

Effective with the closure of a commercial season for black drum, sheepshead, or flounder, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of that species on the waters of the state with pompano strike nets in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of fish legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

AUTHORITY NOTE: Promulgated in accordance with 56:6(10), 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:698 (August 1990); revised L.R.22:____ (____ 1996)

RESOLUTION

RULES FOR HARVEST OF MULLET

WHEREAS, the existing rule governing the harvest of mullet was promulgated in January, 1995, and

WHEREAS, Act 1316³³ of the 1995 Regular Legislative Session amends R.S.56:406, thereby directing changes in the seasons, gears, and licenses and permit requirements for commercial harvest of mullet, and

WHEREAS, emergency procedures must be utilized in order to have the necessary rules in place upon the effective date of the legislation,

THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission does hereby establish emergency rules and promulgate a notice of intent to amend the published regulations concerning the harvest of mullet.

BE IT FURTHER RESOLVED, that the complete copy of the Declaration of Emergency, Notice of Intent and proposed rule are attached to and made part of this resolution.

Perry Gisclair, Chairman

Joe L. Herring
Secretary

**Declaration of Emergency
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(25)(a), 56:326.3, and 56:333 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation act of 1995 for an effective date of ~~August 15~~^{Sept. 1}, 1995. This emergency rule shall be effective on ~~August 15~~^{Sept. 1}, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

S. 343. Rules for Harvest of Mullet

A. Seasons

1. The season for the commercial taking of mullet shall

begin at sunrise of the third Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially at any time outside of this season.

2. Commercial harvest of mullet shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of mullet during the period after sunset and before sunrise.

B. Commercial Taking

1. Mullet may only be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of one thousand two hundred feet in length or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Limits: During the season, there shall be no

daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits: The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

E. Permits

1. The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of one hundred dollars for residents of this state and four hundred dollars for those who are nonresidents.

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form

1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet.

4. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet.

5. Each Mullet Permit holder shall, on or before the tenth of each month of the open season, submit an

information return to the department on forms provided or approved for this purpose, including the pounds of mullet taken commercially during the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

F. General Provisions : Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

G. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

NOTICE OF INTENT
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule (Title 76, Part VII, Ch. 3, Sec. 343) to amend the regulations governing the commercial harvest of mullet. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included R.S. 56:6(25)(a); 56:326.3; 56:333; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

S. 343. Rules for Harvest of Mullet

A. Seasons

1. The season for the commercial taking of mullet shall begin at sunrise of the third Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially at any time outside of this season.

2. Commercial harvest of mullet shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on

Sunday. There shall be no commercial taking of mullet during the period after sunset and before sunrise.

B. Commercial Taking

1. Mullet may only be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of one thousand two hundred feet in length or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Limits: During the season, there shall be no daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits: The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

E. Permits

1. The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of one hundred dollars for residents of this state and four hundred dollars for those who are nonresidents.

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA

in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet.

4. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet.

5. Each Mullet Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of mullet taken commercially during the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

F. General Provisions : Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in

possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

G. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)a), 56:325.1, 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992) amended L.R. 21:___ (January, 1995), amended L.R. 22:___ (_____, 1996).

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

RULE
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby promulgate a Rule (Title 76, Part VII, Ch. 3, Sec. 343) to amend the regulations governing the commercial harvest of mullet. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included R.S. 56:6(25)(a); 56:326.3; 56:333; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

S. 343. Rules for Harvest of Mullet

A. Seasons

1. The season for the commercial taking of mullet shall begin at sunrise of the third Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially at any time outside of this season.

2. Commercial harvest of mullet shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on

Sunday. There shall be no commercial taking of mullet during the period after sunset and before sunrise.

B. Commercial Taking

1. Mullet may only be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of one thousand two hundred feet in length or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Limits: During the season, there shall be no daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits: The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

E. Permits

1. The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of one hundred dollars for residents of this state and four hundred dollars for those who are nonresidents.

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA

in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet.

4. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet.

5. Each Mullet Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of mullet taken commercially during the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

F. General Provisions : Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in

possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

G. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)a), 56:325.1, 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992) amended L.R. 21:___ (January, 1995), amended L.R. 22:___ (_____, 1996).

RESOLUTION

RULES FOR HARVEST OF BLACK DRUM, SHEEPSHEAD AND FLOUNDER WITH
POMPANO STRIKE NETS

WHEREAS, Act 1316 of the 1995 Regular Legislative Session enacts R.S.56:325.4, thereby directing changes in the seasons, gears, and licenses and permit requirements for commercial harvest of black drum, sheepshead and flounder, and other species of saltwater finfish, other than spotted seatrout, red drum, and mullet, and

WHEREAS, emergency procedures must be utilized in order to have the necessary rules in place upon the effective date of the legislation,

THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission does hereby establish emergency rules and promulgate a notice of intent to establish permanent regulations concerning the harvest of black drum, sheepshead and flounder with pompano strike nets

BE IT FURTHER RESOLVED, that the complete copy of the Declaration of Emergency, Notice of Intent and proposed rule are attached to and made part of this resolution.

Perry Gisclair, Chairman

Joe L. Herring
Secretary

Declaration of Emergency
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(10), 56:6(25)(a), 56:326.1, 56:326.3, and 56:325.4 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on ^{Sept. 1} ~~August 15~~, 1995, and shall remain in effect ^{for} ~~of~~ the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Wildlife and Fisheries Commission herein establishes rule and regulations governing the harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

S. 349. Rules for Harvest of Black Drum, Sheepshead, Flounder and

Other Saltwater Species using Pompano Strike Nets.

A. Drum/Sheepshead Strike Net Permit

1. The commercial taking of black drum, sheepshead and flounder with pompano strike nets is prohibited except by special permit issued by the Department of Wildlife and Fisheries, hereby designated as a Drum/Sheepshead Strike Net Permit. This permit is required in addition to the Pompano Strike Net License required by law.

2. No person shall be issued a Drum/Sheepshead Strike Net Permit unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the

income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

d. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

3. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any Drum/Sheepshead Strike Net Permit and shall be forever barred from receiving any such permit in the future.

B. Commercial Taking of Saltwater Finfish using Pompano Strike Nets

1. There shall be two seasons for the commercial harvest of all species of saltwater finfish (other than mullet, spotted seatrout and red drum) with a pompano strike net: the first season shall open on Monday October 16, 1995, and end with the closure of the mullet strike net season, but no later than March 1, 1996; the second season shall open on Monday October

21, 1996, and end with the closure of the mullet strike net season, but no later than March 1, 1997. A season for the taking of these species shall be closed prior to the dates listed in this paragraph if the commercial quota for that species has been taken, or on the date projected by the staff of the department of wildlife and fisheries that a quota will be reached, whichever occurs first. The closure shall not take effect for at least seventy-two (72) hours after notice to public.

2. During these two seasons the commercial harvest of these species with pompano strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of these species with pompano strike nets during the period after sunset and before sunrise.

3. The commercial taking of these species by using a pompano strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one pompano strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the Drum/Sheepshead Strike Net Permit number, if applicable. The

department shall not issue any tag to a person who does not have a social security number.

5. Each Drum/Sheepshead Strike Net Permit holder shall on or before the tenth of each month file a return to the department on forms provided or approved for the purpose, the pounds of black drum from sixteen (16) to twenty-seven (27) inches, the number of black drum over twenty-seven (27) inches, the pounds of sheepshead and the pounds of flounder taken commercially during the preceding month, the gears used for harvest, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

C. General Provisions

Effective with the closure of a commercial season for black drum, sheepshead, or flounder, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of that species on the waters of the state with pompano strike nets in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of fish legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

**Notice of Intent
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a Rule (Title 76, Part VII, Ch. 3, Sec. 349) to establish regulations governing the commercial harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included in R.S. 56:6(10); 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

Title 76

Wildlife and Fisheries

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

S. 349. Rules for Harvest of Black Drum, Sheepshead, Flounder and Other Saltwater Species using Pompano Strike Nets.

A. Drum/Sheepshead Strike Net Permit

1. The commercial taking of black drum, sheepshead and flounder with pompano strike nets is prohibited except by special permit issued by the Department of Wildlife and Fisheries, hereby designated as a Drum/Sheepshead Strike Net

Permit. This permit is required in addition to the Pompano Strike Net License required by law.

2. No person shall be issued a Drum/Sheepshead Strike Net Permit unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than fifty percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than fifty percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

d. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

3. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any Drum/Sheepshead Strike Net Permit and shall be forever barred from receiving any such permit in the future.

B. Commercial Taking of Saltwater Finfish using Pompano Strike Nets

1. There shall be two seasons for the commercial harvest of all species of saltwater finfish (other than mullet, spotted seatrout and red drum) with a pompano strike net: the first season shall open on Monday October 16, 1995, and end with the closure of the mullet strike net season, but no later than March 1, 1996; the second season shall open on Monday October 21, 1996, and end with the closure of the mullet strike net season, but no later than March 1, 1997. A season for the taking of these species shall be closed prior to the dates listed in this paragraph if the commercial quota for that species has been taken, or on the date projected by the staff of the department of wildlife and fisheries that a quota will be reached, whichever occurs first. The closure shall not take effect for at least seventy-two (72) hours after notice

to public.

2. During these two seasons the commercial harvest of these species with pompano strike nets shall not be allowed during the period from 5:00 a.m. on Saturday through 6:00 p.m. on Sunday. There shall be no commercial taking of these species with pompano strike nets during the period after sunset and before sunrise.

3. The commercial taking of these species by using a pompano strike net in excess of one thousand two hundred feet in length is prohibited. Furthermore, use of more than one pompano strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the Drum/Sheepshead Strike Net Permit number, if applicable. The department shall not issue any tag to a person who does not have a social security number.

5. Each Drum/Sheepshead Strike Net Permit holder shall on or before the tenth of each month file a return to the department on forms provided or approved for the purpose, the pounds of black drum from sixteen (16) to twenty-seven (27) inches, the

number of black drum over twenty-seven (27) inches, the pounds of sheepshead and the pounds of flounder taken commercially during the preceding month, the gears used for harvest, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

C. General Provisions

Effective with the closure of a commercial season for black drum, sheepshead, or flounder, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of that species on the waters of the state with pompano strike nets in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of fish legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

AUTHORITY NOTE: Promulgated in accordance with 56:6(10), 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:698 (August 1990); amended L.R.22:___ (___ 1996).

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the

Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

RULE
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby promulgate a Rule (Title 76, Part VII, Ch. 3, Sec. 349) to establish regulations governing the commercial harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included in R.S. 56:6(10); 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

Title 76

Wildlife and Fisheries

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number of black drum over twenty-seven (27) inches, the pounds of sheepshead and the pounds of flounder taken commercially during the preceding month, the gears used for harvest, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

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AUTHORITY NOTE: Promulgated in accordance with 56:6(10), 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:698 (August 1990); revised L.R.22:___ (___ 1996)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Office of Fisheries

The Department of Wildlife and Fisheries is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(b), and pursuant to its authority under R.S. 56:320.F, adopts the rule set forth below.

Each gill net or trammel net used to take freshwater commercial fish shall be marked with a waterproof tag attached to the corkline at each end of the net, no more than three feet from the edge of the webbing. Said tags shall be supplied by the commercial fisherman and shall be completely waterproof. Each tag shall have the fisherman's full name (no initials) and commercial fisherman's license number (not the net license number) printed thereon in the English language, so as to be clearly legible.

This declaration of emergency is necessary because Act 1316 of the 1995 Legislature mandates the Department of Wildlife and Fisheries to adopt this rule. The effective date of Act 1316 is August 15, 1995, which shall be the effective date of this declaration of emergency. It shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Joe L. Herring
Secretary

NOTICE OF INTENT

Department of Wildlife and Fisheries Office of Fisheries

The Secretary of the Louisiana Department of Wildlife and Fisheries hereby advertises his intent to adopt a rule for marking gill and trammel nets used to take freshwater commercial fish.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 1. Freshwater Sport and Commercial Fishing

Section 181. Marking System for Freshwater Gill Nets and Trammel Nets

Each gill net or trammel net used to take freshwater commercial fish shall be marked with a waterproof tag attached to the corkline at each end of the net, no more than three feet from the edge of the webbing. Said tags shall be supplied by the commercial fisherman and shall be completely waterproof. Each tag shall have the fisherman's full name (no initials) and commercial fisherman's license number (not the net license number) printed thereon in the English language, so as to be clearly legible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:320(F).

HISTORICAL NOTE: Promulgated by the Louisiana Department of Wildlife and Fisheries, Office of Fisheries, L.R.

Interested persons may submit written comments on the rule to Bennie J. Fontenot, Jr, Administrator, Inland Fisheries Division,

Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA
70898-9000 no later than 4:30 PM, Friday, November 10, 1995.

Joe L. Herring
Secretary

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

**LOUISIANA SEAFOOD MANAGEMENT COUNCIL;
DELTA COMMERCIAL FISHERIES
ASSOCIATION, LAWRENCE "Brother"
STIPELCOVICH; LAKE PONTCHARTRAIN
FISHERMAN'S ASSOCIATION, PETER GERICA;
SOUTH LOUISIANA FINFISHERMEN'S ASSOCIATION,
OLIVER KELLEY; KELLEY'S SEAFOOD; STEVE HOTOPH;
BATTISTELLA SEAFOOD, PRESTON BATTISTELLA;
BRIGHTSEN'S RESTAURANT, FRANK BRIGHTSEN;
S. J. SAMPEY, d.b.a. TABANS SEAFOOD;
GATORY FISHERIES, JAY TROTTER; LANDLOCK
TRUCKING COMPANY, DANIEL SCHICOLA;
DAN'S SEAFOOD, DAN THOMPSON; FISHERMEN'S
SEAFOOD, WILLIE F. PORTER; P. L. SEAFOOD,
TUNA FRESH, LARRY LOGA; PIAZZA SEAFOOD
WORLD, SAL PIAZZA; LOUISIANA COMMERCIAL
FISHERMAN'S ASSOCIATION OF DULAC,
MYRON PROSPRIE; UNITED COMMERCIAL
FISHERMEN'S ASSOCIATION, GEORGE BARISICH;
GULF COAST COMMERCIAL FISHERMEN,
TRACY KUHN; LOUISIANA SEAFOOD EXCHANGE,
THOMAS LUSCO; BENNY MILLER; ROBERT S. FRITCHEY;
CONCERNED SHRIMPERS OF LOUISIANA,
"Tee John" MIALJEVICH,**

DOCKET NO. _____

DIVISION _____

VERSUS

**LOUISIANA WILDLIFE AND FISHERIES COMMISSION;
LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES.**

MEMORANDUM OF AUTHORITIES IN SUPPORT OF INJUNCTION.

Pursuant to Local Rule VIII, Section 2 (A), petitioners, through undersigned counsel, hereby file a memorandum of authorities in support of their request for a temporary restraining order. Given that time is of the essence, as Act 1316, goes into effect on Tuesday, August 15, 1995, we recite supporting authorities without elaboration at this temporary restraining order stage. We shall file the customary memorandum in support of a preliminary injunction, with full elaboration of law and fact, in due course.

Pursuant to Local Rule VIII, Section 2 (A), petitioners hereby declare:

That evidence will be taken at the hearing on the rule for a preliminary injunction.

AUTHORITIES:

First Claim: VIOLATION OF PUBLIC TRUST DOCTRINE.

Article IX, § 1 of the Louisiana Constitution mandates:

§ 1. Natural Resources and Environment; Public Policy

Section 1. The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy.

This constitutional provision embodies the public trust doctrine, under which the Legislature must allocate the natural resources of the state equitably and fairly among competing users, applying a rule of reasonableness—"a particular sort of careful and informed decision-making process and creates judicially enforceable duties." Save Ourselves v. Louisiana Environ. Cont. Com'n, 452 So.2d 1152, 1159 (La. 1984.) Accord, Acts 1991, No. 708, § 1, viz.:

The policy of the State of Louisiana is hereby declared to be the following:

Stewardship of the state's saltwater finfish resources shall have as its utmost concern the continued health and abundance of the resource and its environs, shall provide for optimum sustained benefits to the state, shall be responsive to the needs of interested and affected citizens, shall ensure the proper and fair utilization of these resources for the citizens of the state in present and future generations, shall preserve the state's exclusive right to manage the fisheries within or beyond its jurisdiction, and shall be based on the best scientific information available. In addition, such stewardship of the state's saltwater finfish resources shall draw upon federal, state, and academic capabilities and promote efficiency in carrying out research, administration, management, and enforcement.

This is Title 56, Section 638.4 (our emphasis), which is still on the books—a black letter manifestation of the public trust doctrine in Louisiana's Revised Statutes. Act 1316's amendment of Section 640.3—"The right to fish commercially"—drops "commercially" out of the trust.

Marine resources, including Louisiana's finfish, are included within the ambit of the public trust doctrine, which we say has been breached here. See generally, James G. Wilkins and Michael Wascom, *Public Trust Doctrine in Louisiana*, 52 La. L. Rev. 861 (1992).

Petitioners' allegations establish a breach of fair play in the allocation of finfish between commercial and recreational finfish resources, wholly unsupported by the marine biology experts of the defendants themselves. Act 1316 is rife with discriminatory fees, seasons, and penalties, all of which breach the public trust mandate of equitable distribution, based on a careful scientific investigation by the Legislature, of the best economic, social, and cultural balance and accommodation of competing users. In this regard, we think it significant that previous to Act

1316, the Legislature itself acknowledged that commercial fisherman constitute "a culture and heritage that is unique to Louisiana." LRS —56:571(A). And when the "Right to fish commercially" was vouchsafed by statute, Acts 1986, No. 988, § 1, LRS —56:640.3, the Legislature solemnly recited —this was before Act 1316:

"A. The legislature recognizes that legal methods to harvest any species of fish should not create a severe economic and personal hardship on the fishermen using said method. The legislature thereby declares that restrictions on legal methods to harvest finfish . . . should be recommended by the Louisiana Department of Wildlife and Fisheries.

"B. The department shall recommend the elimination of a presently legal method to harvest fish only if any species of fish affected by that harvesting method will be damaged without the elimination of that method. The department shall base its recommendations on biological data which may be obtained by any method and from any source the department deems appropriate." (our emphasis)

What we say is that these earlier declarations are faithful to the public trust doctrine; Act 1316 breaches that trust, in violation of Article IX, § 1 of the Louisiana Constitution of 1974. Save Ourselves v. Louisiana Environ. Cont. Com'n., 452 So.2d 152 (La. 1984); Matter of American Waste and Pollution Control Co., 642 So.2d 1258, 1262 (La. 1994).

Second Claim: TAKING OF PROPERTY WITHOUT DUE PROCESS.

Act 1316 itself recognizes that petitioners' gill nets are property rendered illegal or useless; the buy-back provisions of Section 13.1 acknowledge that petitioners acted in justifiable reliance on the "Right to fish commercially" —we emphasize that which the Legislature has now dropped —why else buy them back?

If it is argued that this is merely^U Legislative grace, then we direct this Court's attention to Board of Regents v. Roth, 408 U.S. 564, 577 (1971), on what counts as a property interest that cannot be taken without due process and just compensation, viz.:

To have a property interest as a benefit, a person clearly must . . . have a legitimate claim of entitlement to it. . . .

Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law —rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

The "Right to fish commercially" certainly created in petitioners an entitlement and a

justifiable investment in their gill nets, which the state has now expropriated by Act 1316. Just compensation is due, and none is in the offing, as our petition makes clear.

Compensation is due in advance, under venerable authority. State v. Phares, 159 So.2d 144, 147 (La. 1964). Here there is none, as of August 15, 1995, the effective date of the act.

The Department's proposed schedule of a 50 % cost buy-back of netting makes no allowance for improvements on the manufacturer's netting, which caused Commission Chairman Perry Gisclair to question the reasonableness of the proposed rates in light of the fisherman's improvements such as footings, weights, and labor. And the law is clearly on Chairman Gisclair's side: improvements are compensable and must be considered. State Department of Highways v. Blair, 285 So.2d 212, 215 (La. 1973).

As to our general due process attack on Act 1316, *i.e.*, that it is arbitrary and capricious in the respects specifically alleged, we think City of Shreveport v. Curry, 357 So.2d 1078 (La. 1978), is quite apposite. Shreveport's mindless outlawing of frog gigging in Cross Lake, without the requisite showing of biological or any other necessity was declared unconstitutional on due process grounds, *viz.*:

the government does not have unlimited authority to regulate the lives of its citizens, but may pass only those laws which are reasonably related to protection or promotion of a public good such as health, safety, or welfare. A law which exceeds the bounds of reasonableness violates due process of law.

357 So.2d at 1081.

And more, to counter the plea of the police power:

But the legislature is prohibited from enacting such laws except on proper occasions and for adequate reasons. If the reasons are not adequate, such legislation violates the due process clauses of the [federal and state] Constitutions.

Teriot v. Terrebonne Parish Police Jury, 436 So.2d 515, 520 (La. 1983).

The supposed conservation aim of Act 1316 is just that, a pretext for outlawing the lawful business of commercial netting of Louisiana's abundant supply of finfish, without a biological basis and without adequate reasons other than favoring recreational fisherman. "An ongoing business or the right to engage in a lawful calling is a property right entitled to constitutional protection. Banjavich v. Louisiana Licensing Board for Marine Divers, 111 So.2d 505 (La. 1959); Parker v. French Market Corp., 615 So.2d 1347, 1351 (La. App. 1993).

What have petitioners been doing since the "Right to fish commercially" went into effect in 1986 if not pursuing a lawful calling? That calling cannot be destroyed without a showing that Act 1316 is in fact what it purports to be, "The Louisiana Marine Conservation Act of 1995." (Our emphasis). No such showing can be made, as the defendants' expert marine biologists will inform this Honorable Court.

And again:

The legislature has no power, under the guise of police regulations, arbitrarily to invade the personal rights and liberty of the individual citizen, to interfere with private business or impose unusual or unnecessary restrictions upon lawful occupations, or to invade property rights.

Paillot v. Wootan, 559 So.2d 758, 761 (La. 1990), quoting Schwegmann Brothers v. Louisiana Board of Alcoholic Beverage Control, 43 So.2d 248, 256 (La. 1949) (our emphasis).

Measured by these standards, petitioners' specific allegations establish a clear violation of substantive due process. In one particular, why outlaw mullet strike netting at night when they are customarily taken? And why are recreational fishermen favored in this regard? There is no just explanation. At a minimum, petitioners are entitled to a hearing on the merits of their due process claims, all the while maintaining the status quo by temporary restraining order.

As to vagueness, Paragraph 20 of the petition alleges that provisions of the act are so self-contradictory, arbitrary, and unclear as to violate due process. In the words of Justice Dennis: "A law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits," State in Interest of Hunter, 387 So.2d 1086, 1088 (La. 1980) (our emphasis). As our petition shows, the Wildlife and Fisheries Commission itself cannot figure out the meaning of various provisions of Act 1316, which "is so unclear in what it permits or forbids that a person cannot know what the law expects of him." State in Interest of Hunter, 387 So.2d at 1088. This violates due process.

Certainly denying a mullet strike net tag or a pompano strike net tag "to a person who does have a social security number" — this is Section 325.3(C)(4), and again Section 325.4(B)(4)—is capricious, unless the Legislature wants to deny to petitioners any substitute opportunity to feed their families by the labor of their cultural and historic nets, leaving such mullet and pompano strike netting to illegal aliens.

Perhaps this is a careless oversight. But it is being whispered about that the GCCA (Gulf

Coast Conservation Association; zealous supporters of Act 1316) is ready to go to court to challenge the Department's issuance of mullet and pompano strike net tags to petitioner social security card-carriers.

Fourth Claim: EX POST FACTO LAW; EXCESSIVE PUNISHMENT.

Here we rely on Article I, § 23 of the Louisiana Constitution of 1974. Act 1316 outlaws what was legal — "The right to fish commercially"; with gill nets — and vouched safe by the Legislature in 1986. True, the Legislature may change its mind, but not without overriding reasons established in the record; there are none here. Nor can the Legislature unduly penalize justifiable reliance on past rules. That faith has been broken here.

We direct Your Honor's attention to State v. Perry, 610 So.2d 746 (La. 1992). Article I, § 20 goes beyond the Federal Eight Amendment. We say it applies here, to the elevating of class three violations into a permanent bar denying petitioners access to the Commerical Fisherman's Assistance Program and to the substitute commercial rod and reel license and all the rest of the supposed *quid quo pro's* of Act 1316. Article I, § 20 has an equal protection principle in it, as well as a prohibition against disproportionate penalties. Perry, 610 So.2d at 762-765. Act 1316, measured by our Third claim against it, breaches these principles.

Fourth Claim: DENIAL OF EQUAL PROTECTION OF THE LAWS.

Article I, § 3 of the Louisiana Constitution provides more protection than the Federal Equal Protection Clause. It specifically prohibits arbitrary discrimination "against a person because of . . . culture, [and] physical condition" Certainly Act 1316 discriminates arbitrarily against petitioner Steve Hotoph, whose disabling physical condition is entirely forgotten by Act 1316, as we show in Paragraph 17 of the Petition.

As to the link between Act 1316 and arbitrary discrimination based on culture, we need only recite the earlier trumpeting of the Legislature:

it is the policy of this Subpart to provide every method of encouragement and assistance to the commercial fishermen of the state of Louisiana, to protect a culture and heritage that is unique to Louisiana

This provision of Title 56, Section 571 (A), is still on the books. Act 1316 not only ignores petitioners' unique cultural contribution to the State, but tramples it to death. Our allegations, which we are entitled to prove, show a capricious disregard of this unique cultural heritage for no good reason other than discrimination favoring a powerful majority class of recreational

fisherman. This violates Article I, § 3. Accord, City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985).

We reach the Federal Commerce Clause.

Fifth Claim: VIOLATION OF THE FEDERAL COMMERCE CLAUSE.

As to treble exaction of a \$250. fee for use of a gill net in the federal EEZ and for a permit to traverse the State's waters to and fro the federal exclusive economic zone, these tackings-on violate the Commerce Clause. Oregon Waste Systems v. Depart. of Env. Quality, ___ U.S. ___, 114 S. Ct. 1345, 1351 (1994), viz.: "[O]ne of the central purposes of the Clause was to prevent the States from 'exacting *more* than a just share' from interstate commerce." Use of the gill net is lawful in the federal EEZ and no state can extend its sovereign arm to outlaw it in the EEZ. Vietnamese Fishermen v. Cal. Dept. of Fish & Game, 816 F. Supp. 1468 (N.D. Cal. 1993). And without a showing from defendants —whose burden of proof it is —that this treble exaction is justifiably related to a proportionate increase in state burden, and none will come to Your Honor's mind, these piggy-backed fees violate the Commerce Clause. Chemical Waste Management, Inc. v. Hunt, ___ U.S. ___, 112 S. Ct. 2009 (1992).

As to our general Commerce Clause attack, we shall prove a gigantic destruction of interstate commerce in fish, all purportedly in the name of Louisiana's "Marine Conservation Act of 1995" (our emphasis). But of conservation, there is none; of reallocation of resources there is plenty —all in violation of the public trust doctrine, due process of law, and equal protection.

Your Honor is not bound by the State's professed aim:

This Court will determine for itself what the necessary operation and effect of a state law challenged on the ground that it interferes with or burdens interstate commerce. The name, description or characterization given it by the legislature or the courts of the State will not necessarily control. Regard must be had to the substance of the measure rather than its form.

Lacoste v. Dept. of Conservation of the State of Louisiana, 263 U.S. 545, 550 (1924).

If defendants say Lacoste is outmoded and Your Honor should shut your eyes to reality because the State owns the fish in petitioners' nets, we beg this Court to attend to Hughes v. Oklahoma, 441 U.S. 322 (1979), where the fiction of state ownership of her fish ran up against the wall of the Commerce Clause.

Under Hughes v. Oklahoma's latest pronouncement of the balance that must be struck between conserving the State's fish and the Commerce Clause, Act 1316 crashes loudly.

We will leave further elaboration to our memorandum in support of a preliminary injunction which we shall file forthwith upon Your Honor's rule nisi. We respectfully submit that our skeletal recital of authorities warrants issuance of a TRO.

Respectfully submitted,
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BY: Robert A. Barnett
ROBERT A. BARNETT
La. Bar Roll # 2778
Paul R. Baier
PAUL R. BAIER
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4222 Hyacinth Ave.
Baton Rouge, La. 70808
(504) 344-9815

11 August 1995

AFFIDAVIT OF SERVICE

**STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE**

BEFORE ME, the undersigned Notary Public, personally came and appeared
PAUL R. BAIER, who after being duly sworn did depose and say that:

Affiant has personally hand delivered a copy of the Petition for Declaratory Judgment and Injunctive Relief, **LOUISIANA SEAFOOD MANAGEMENT COUNCIL, et al.,**
VERSUS LOUISIANA WILDLIFE AND FISHERIES COMMISSION, LOUISIANA
DEPARTMENT OF WILDLIFE AND FISHERIES, Application for a Temporary Restraining Order and rule to show cause why a preliminary injunction should not issue, and Memorandum of Authorities in Support of Injunction to Donald E. Puckett, Esq., Counsel for the Louisiana Department of Wildlife and Fisheries and the Louisiana Wildlife and Fisheries Commission, at his office, 2000 Quail Drive, Baton Rouge, La. 70808 (telephone 504- 765-2800).



PAUL R. BAIER

Sworn to and subscribed before me this _____ day of August, 1995.

NOTARY PUBLIC

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

**LOUISIANA SEAFOOD MANAGEMENT COUNCIL;
DELTA COMMERCIAL FISHERIES
ASSOCIATION, LAWRENCE "Brother"
STIPELCOVICH; LAKE PONTCHARTRAIN
FISHERMAN'S ASSOCIATION, PETER GERICA;
SOUTH LOUISIANA FINFISHERMEN'S ASSOCIATION,
OLIVER KELLEY; KELLEY'S SEAFOOD; STEVE HOTOPH;
BATTISTELLA SEAFOOD, PRESTON BATTISTELLA;
BRIGHTSEN'S RESTAURANT, FRANK BRIGHTSEN;
S. J. SAMPEY, d.b.a. TABANS SEAFOOD;
GATORY FISHERIES, JAY TROTTER; LANDLOCK
TRUCKING COMPANY, DANIEL SCHICOLA;
DAN'S SEAFOOD, DAN THOMPSON; FISHERMEN'S
SEAFOOD, WILLIE F. PORTER; P. L. SEAFOOD,
TUNA FRESH, LARRY LOGA; PIAZZA SEAFOOD
WORLD, SAL PIAZZA; LOUISIANA COMMERCIAL
FISHERMAN'S ASSOCIATION OF DULAC,
MYRON PROSPRIE; UNITED COMMERCIAL
FISHERMEN'S ASSOCIATION, GEORGE BARISICH;
GULF COAST COMMERCIAL FISHERMEN,
TRACY KUHN; LOUISIANA SEAFOOD EXCHANGE,
THOMAS LUSCO; BENNY MILLER; ROBERT S. FRITCHEY;
CONCERNED SHRIMPERS OF LOUISIANA,
"Tee John" MIALJEVICH,**

DOCKET NO. _____

DIVISION _____

VERSUS

**LOUISIANA WILDLIFE AND FISHERIES COMMISSION;
LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES.**

**PETITION FOR DECLARATORY JUDGMENT
AND FOR INJUNCTIVE RELIEF.**

Petitioners, appearing through undersigned counsel, with respect represent:

1.

Petitioners are a group of licensed commercial saltwater fishermen, their associations, allied commercial seafood marketing interests, wholesalers, retailers, restaurateurs, and seafood consumers. All of the petitioners are citizens of Louisiana and/or lawful business organizations domiciled in Louisiana.

2.

Petitioners complain that Act 1316 of the 1995 Regular Session of the Louisiana Legislature is unconstitutional under both the State and Federal Constitutions and should be

declared null and void by this Honorable Court. Petitioners request a temporary restraining order issue forthwith, pending a hearing on their prayer for preliminary injunctive relief.

3.

Jurisdiction on state constitutional claims lies under Article V, § 16 of the Louisiana Constitution of 1974 and Article 1871 of the Code of Civil Procedure (Declaratory judgments). Petitioners assert their federal constitutional claims pursuant to 42 U.S.C. § 1983 and § 1988.

4.

Defendant Louisiana Wildlife and Fisheries Commission is an agency of the State of Louisiana domiciled in Baton Rouge, Louisiana.

5.

Defendant Louisiana Department of Wildlife and Fisheries is an agency of the State of Louisiana domiciled in Baton Rouge, Louisiana.

First Claim:

VIOLATION OF PUBLIC TRUST DOCTRINE.

6.

Act 1316 violates Article IX, § 1 of the Louisiana Constitution of 1974 by its unequal allocation in fact of saltwater finfish resources between commercial and recreational fishing interests without a sound basis in conservation policy or scientific evidence, and without a careful weighing and balancing of competing interests in the allocation of the use of the State's saltwater marine resources.

7.

Although purporting to be a conservation measure, Act 1316 in fact reallocates the State's saltwater finfish resources unfairly to recreational interests without the proper and careful balancing of social, economic, and cultural interests mandated by Article IX, § 1 of the Louisiana Constitution of 1974.

8.

No biological or scientific basis in conservation policy supports Act 1316's drastic restriction of the use of gill nets for commercial saltwater fishing, which previously had been determined by the Legislature to be vital to the State's economy and cultural tradition. No rational biological or scientific basis exists for the establishment of the thirty percent spawning

potential ratio cut-off for different underutilized species of fish, Section 325.4 (D) (2), or for mullet, Section 333 (G) (2).

9.

All of the species of saltwater fish supposedly threatened by the use of gill nets are in healthy supply, including red drum, as determined by marine fisheries scientists who advise defendants herein. The Legislature disregarded these biological findings and the determinations of the Department of Wildlife and Fisheries in enacting Act 1316, contrary to the mandate of Article IX, § 1 and the Legislature's constitutional duty to base resource allocation decisions on the best available scientific evidence.

Second Claim:

**DENIAL AND TAKING OF PROPERTY WITHOUT DUE PROCESS
AND JUST COMPENSATION.**

10.

Millions of dollars have been invested by the commercial fisheries industry, including petitioner commercial saltwater fishermen, in the purchase of their boats, equipment, and gear in pursuit of the Legislatively conferred "Right to fish commercially" vouchsafed by Act 1986, No. 988, § 1; L.R.S. 56:640.3 (A). The property interests thereby created are effectively destroyed by Act 1316, which tramples upon justifiable, investment-backed reliance interests without a reasonable basis in fact, contrary to Article I, §§ 2 and 4 of the Louisiana Constitution of 1974.

11.

In justifiable reliance upon their "Right to fish commercially," petitioners have paid to the State hundreds of thousands of dollars for the development of a "Commercial Fisherman's Sales Card," an idea originated by the commercial fisheries industry and enacted into law by Acts 1990, No. 441, § 1; L.R.S. 56:307^{1/2}(A). Since 1981, petitioners have contributed hundreds of thousands of dollars to the Louisiana Seafood Promotion and Marketing Board, pursuant to LRS — 56:578.1, *et seq.* These justifiable, investment-backed reliance interests are also effectively destroyed by Act 1316 without a rational basis in fact, amounting to a taking of private property for public use without just compensation contrary to Article I, § 4 of the Louisiana Constitution of 1974.

12.

The Legislature, in Act 1316 itself, recognizes that commercial fishermen "are severely impacted by the Louisiana Marine Conservation Act of 1995." This is Section 13 (A) of the Act. To remedy the destruction of heretofore lawful saltwater gill nets, Section 13.1 enacts the "Commercial Fisherman's Assistance Program," to wit:

"A. It is the purpose of this Section to provide assistance to those commercial fishermen who are displaced or severely financially impacted by the loss of the use of commercial fishing nets due to the enactment of the Louisiana Marine Resources Conservation Act of 1995. Furthermore, it is specifically provided that the intent of the legislature in the creation of this Section is to promote the enhancement of Louisiana's marine resources by the removal of indiscriminate entanglement nets from coastal waters. Among other benefits, this Section will have a direct and positive impact on saltwater fishery resources by providing the financial incentive to the users of these types of formally legal fishing gear to sell the gear back to the state."

13.

Defendant Department of Wildlife and Fisheries is mandated until January 1, 1996 to purchase from qualified persons "those nets that may have been rendered illegal or useless due to the enactment of the Louisiana Marine Resources Conservation Act of 1995." Further, "the department shall adopt by rule, in accordance with the Administrative Procedure Act, no later than September 1, 1995, a schedule showing the amount to be paid for each type and size of net." Section 13.1 (D).

14.

The revenue required to fund the Commercial Fisherman's Assistance Program is derived from an additional fee of three dollars, collected until June 30, 1998, for a recreational saltwater fishing license, thirty percent of which shall be expended within the enforcement division of the defendant Department of Wildlife and Fisheries. Section 13.1 (E).

15.

The gross disparity between the revenue raised under Section 13.1 (E) for funding the Commercial Fisherman's Assistance Program, including the purchase of gill nets rendered illegal or useless due to the enactment of the Louisiana Marine Resources Conservation Act of 1995, and the justifiable economic investment in the "Right to fish commercially" destroys petitioners' property without just compensation in violation of Article I, § 4 of the Louisiana Constitution of 1974. In one particular, petitioner Steve Hotoph in reliance upon the legislative declared "Right to fish commercially" purchased commercial gill nets costing thousands of dollars each. Act

1316 realistically offers Hotoph a pittance for his private property.

16.

Under Section 13.1 (D) of the Act, the defendant Department of Wildlife and Fisheries, "Until January 1, 1996 shall purchase from qualified persons those nets that may have been rendered illegal or useless due to the enactment of the Louisiana Marine Resources Conservation Act of 1995." No money is currently available to fund the mandated purchase by the statutory deadline of January 1, 1996, and the defendant Department has proposed delaying any such net buy-back until June 30, 1996, when it proposes to cut off revenue collection under the Act for said purpose. The Department's proposed buy-back is "at a rate not to exceed 50% of the average cost of each qualifying net," which is grossly disproportionate to the justifiable economic investment in petitioners' equipment. The Department's proposed buy-back schedule, is based exclusively on 50 % the average cost of each qualifying net and makes no allowance for necessary appurtenances, footings, weights, labor investment, and economic value of the net. No fishermen have been consulted by the Department as to whether the proposed buy-back schedules are realistic; indeed, at public meeting of defendant Wildlife and Fisheries Commission held on August 9, 1995, the Commission's Chairman, Perry Gisclair, suggested that the proposed buy-back schedules seem "unrealistic." Absent realistic buy-back schedules, with available funding prior to the statutory cut-off date of January 1, 1995, the buy-back promise of the "Commercial Fisherman's Economic Assistance Fund" is a sham denying petitioners due process of law under Article I, §§ 2, 4 of the Louisiana Constitution of 1974 and the Fourteenth Amendment to the United States Constitution.

17.

No provision of Act 1316 makes allowance for disabled commercial fishermen whose disability through no fault of their own prevented them from earning more than fifty percent of their income from commercial gill net fishing in the years 1993, 1994, and 1995, thus disqualifying them as a class from meeting the eligibility criteria imposed by Act 1316 for the Commercial Fisherman's Assistance Program. Petitioner Steve Hotoph suffered an accident which prevented him from pursuing his "Right to fish commercially" during the qualifying years. Act 1316, by its failure to address disabled fishermen, will now deprive Hotoph of some \$200,000 invested in commercial saltwater gear rendered illegal and useless under the Act. This

denies due process.

18.

Act 1316 also ignores millions of dollars of justifiable investment by allied processors, marketers, wholesalers, retailers, restaurateurs, in reliance upon the "Right to fish commercially," now unreasonably taken or damaged without just compensation in violation of Article I, § 4 of the Louisiana Constitution of 1974.

19.

The prohibition of Section 333 (H) of Act 1361 against transfer for financial gain of a commercial rod and reel license issued pursuant to Section 305(B) (14) of the Act and a commercial mullet strike net license issued pursuant to Section 333 (D)(1) constitutes an unconstitutional restraint against the alienation of property interests, built up in reliance upon petitioner's "Right to fish commercially," in violation of Article I, § 4 of the Louisiana Constitution of 1974.

20.

Provisions of Act 1316 are so self-contradictory, arbitrary, and unclear as deny due process of law. In one glaring particular, the eligibility criteria for the "commercial taking of underutilized species" of Section 325.4 (B)(1), (a) read literally exclude shrimp trawlers from commercial catches of underutilized species, which is customary during winter months for sheepshead. This is precisely how the defendant Department has interpreted these provisions of Section 325.4 (B)(1), (a), to Chairman Gisclair's questioning disbelief voiced at the Commission's August 9, 1995 emergency meeting on implementing Act 1316. Section 325.3 (C)(4) (mullet strike net tag) recites "The department shall not issue any tag to a person who does have a social security number." Section 325.4 (B)(4) (pompano strike net tag) recites, "The department shall not issue any tag to a person who does have a social security number." Other provisions of the Act have so confused the Commission and counsel that any action on implementation rules has been postponed until August 15, 1995, the effective date of the Act, when the Commission proposes to hear testimony from Representative Triche, co-sponsor of House Bill 815, as to the meaning of the troubling provisions of Act 1316.

Third Claim:

EX POST FACTO LAW; EXCESSIVE PUNISHMENT.

21.

Act 1316 violates Article I, § 23 of the Louisiana Constitution of 1974 by working a retroactive disqualification of all commercial fishing licensees convicted of class three violations from applying for assistance under the Commercial Fisherman's Assistance Program, Section 13.1 (B) (2); for a commercial rod and reel license, Section 305 (B) (14) (c); for a commercial spotted sea trout license, Section 325.3 (D)(1) (d); and for a commercial underutilized species license, Section 325.4 (B)(1) (d). Previous law permitted revocation of license for a class three violation only "for the period for which it was issued," LRS —56:38. To further punish in perpetuity for class three convictions denies due process and constitutes excessive punishment in violation of Article I, § 20 of the Louisiana Constitution of 1974.

22.

The penalty provisions of Act 1316, Section 325.3 (F) (spotted sea trout); 325.4 (C) (underutilized species); Section 333 (F) (mullet) —"shall be forever barred" —deny due process and constitute excessive punishment in violation of Article I, § 20 of the Louisiana Constitution of 1974.

Fourth Claim:

DENIAL OF EQUAL PROTECTION OF THE LAWS.

23.

Act 1316 arbitrarily, capriciously, and unreasonably discriminates against petitioner class, in violation of Article I, § 3 of the Louisiana Constitution of 1974, by severely curtailing and eliminating the historically and culturally based saltwater commercial gill net fisheries industry without attending in fact to a fair and equitable allocation, based on scientific evidence, of Louisiana's saltwater finfish resources between competing recreational and commercial fishing interests.

24.

No rational basis exists, other than unlawful cultural discrimination, for outlawing the use of gill nets in saltwater, but not freshwater, commercial fishing in Louisiana.

25.

The gross disparities of fee schedules, inequality of seasons (no commercial weekend or night fishing; recreational permitted), and penalties of Act 1316, and the deprivation in perpetuity of red drum as a commercial marine resource available to petitioners, discriminates against the culturally based, discrete and insular Louisiana commercial fisheries industry in violation of Article I, § 3 of the Louisiana Constitution of 1974.

Fifth Claim:

VIOLATION OF FEDERAL COMMERCE CLAUSE.

26.

Section 305 (B) (4) (b) of Act 1316 imposes a fee of "Two hundred fifty dollars per gill net that may only be used in the federal exclusive economic zone (EEZ) as defined in 50 Code of Federal Regulations §620." This is piggy-backed on top of the two hundred fifty dollar licensing fee per mullet strike net and the two hundred fifty dollar fee per pompano strike net exacted by Section 305 (B) (4) (c), (d). By Section 305.5 (B) of Act 1316, the Secretary of defendant Department of Wildlife and Fisheries is mandated to charge an additional fee of two hundred fifty dollars "for issuance of permits to persons authorized to possess gill nets, trammel nets, strike nets, and seines within the territorial boundaries of the state while traversing state waters to and from the federal exclusive economic zone." No other state in the Union imposes such fees for use of a gill net in the federal EEZ —lawful under federal law —and for their possession while traversing state waters to and therefrom. No additional burdens or administrative costs proportionate to the triple exaction of a two hundred fifty dollar fee is incurred by the State on account of the use of gill nets in the federal EEZ and their possession while traversing state waters to and from the federal exclusive economic zone. Accordingly, Sections 305 (B) (4) (b) and 305.5 (B) of Act 1316 violate the Commerce Clause of the United States Constitution, Article I, § 8.

27.

By its overall effect, Act 1316 substantially burdens interstate commerce in fish (millions of pounds, worth millions of dollars to Louisiana) without any significant conservation —the purported aim of the Act —of Louisiana's marine resources.

Millions of pounds of mullet as an interstate food fish, whose commercial value in in the

millions of dollars, will be eliminated. As recently as 1991, the Legislature declared that "both the sport and commercial fishing industries are vital to the economy of the coastal region and the entire state." Acts 1991, No. 708, § 1; LRS — 56:638.1. Less drastic alternatives, accommodating whatever conservation interests are in fact threaten and the federal interest in the free flow of interstate commerce, are readily available as determined by the defendant Department's own experts. Accordingly, Act 1316 violates the Federal Commerce Clause, Article I, § 8 of the United States Constitution.

IRREPARABLE INJURY.

28.

Act 1316, which was left unsigned but not vetoed by Governor Edwards, goes into effect August 15, 1995. No implementing rules have been adopted by defendants and funds are unavailable to meet the January 1, 1996 net buy-back mandated by Section 13.1 (D). Enforcement of Act 1316 will result in immediate, incalculable, and irreparable damage to the commercial seafood industry, to the public trust in Louisiana's marine resources, to the free flow of interstate commerce, and to petitioners' constitutional rights to due process and equal protection of the laws.

PRAYER FOR RELIEF.

29.

WHEREFORE, petitioners respectfully pray:

1. That a temporary restraining order issue forthwith, pursuant to Code of Civ. Pro. art. 3603, prohibiting the defendants Louisiana Wildlife and Fisheries Commission and Louisiana Department of Wildlife and Fisheries, officers, employees, agents, or anyone acting in concert with defendants from enforcing Act 1316 of the 1995 Regular Session pending a hearing on petitioners' application for a preliminary injunction.
2. That a rule nisi issue forthwith setting a hearing on petitioners' application for a preliminary injunction.

3. That a preliminary injunction issue and that following trial on the merits in due course, a judgment be entered in petitioners' favor declaring Act 1316 unconstitutional on its face and as applied and permanently enjoining its enforcement.


4. Petitioners pray for certification of this suit as a class action pursuant to Code Civ. Pro. art. 591.

5. Petitioners pray for attorney's fees pursuant to 42 U.S.C. § 1988.

6. Petitioners pray for all other legal and equitable relief the Court deems just.

Respectfully submitted,
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BY: 
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4222 Hyacinth Ave.
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(504) 344-9815
Attorneys for Petitioners

PLEASE SERVE:

LOUISIANA WILDLIFE AND FISHERIES COMMISSION,
through Secretary **JOE L. HERRING**
2000 QUAIL DRIVE
BATON ROUGE, LA. 70808

LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES
through Secretary **JOE L. HERRING**
2000 QUAIL DRIVE
BATON ROUGE, LA. 70808

ATTORNEY GENERAL RICHARD P. IEYOUB, Attorney General of Louisiana,
at his business office through his staff,
22nd Floor
State Capitol Building
Baton Rouge, La.

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

LOUISIANA SEAFOOD MANAGEMENT COUNCIL,
et al.

DOCKET NO. _____

VERSUS

DIVISION _____

LOUISIANA WILDLIFE AND FISHERIES
COMMISSION; LOUISIANA DEPARTMENT
OF WILDLIFE AND FISHERIES.

VERIFICATION.

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public, personally came and appeared
PRESTON BATTISTELLA; PETER GERICA; OLIVER KELLEY; BENNY MILLER;
STEVE HOTOPH; S. J. SAMPAY; DONALD J. CHERAMIE; and JOSEPH ALFONSO,
who after being duly sworn did depose and say that:

Affiants are petitioners in the foregoing matter and all the allegations of fact contained
above and foregoing Petition are true and correct to the best of Affiants' knowledge, information,
and belief.


PRESTON BATTISTELLA


S. J. SAMPAY


PETER GERICA


DONALD J. CHERAMIE

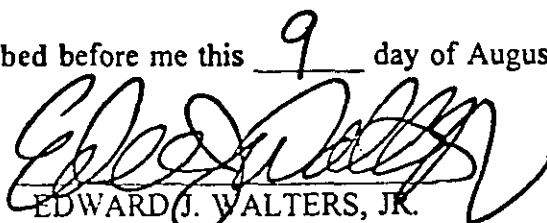

OLIVER KELLEY


JOSEPH ALFONSO


BENNY MILLER


STEVE HOTOPH

Sworn to and subscribed before me this 9 day of August, 1995.


EDWARD J. WALTERS, JR.
NOTARY PUBLIC

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

**LOUISIANA SEAFOOD MANAGEMENT
COUNCIL, *et al.*,**

**DOCKET NO. _____
DIV. _____**

VERSUS

**LOUISIANA WILDLIFE AND FISHERIES COMMISSION;
LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES.**

TEMPORARY RESTRAINING ORDER:

IT APPEARING from the verified Petition herein that immediate and irreparable injury, loss, or damage will result to petitioners by virtue of operation of Act 1316 of the 1995 Regular Session before notice can be served and a hearing held on petitioners' application for a preliminary injunction:

IT IS ORDERED that a temporary restraining order issue herein, directed to defendants **LOUISIANA WILDLIFE AND FISHERIES COMMISSION** and the **LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES**, through their attorney, Donald E. Puckett, Esq., at the Commission and Department offices, 2000 Quail Drive, Baton Rouge, La. 70808, restraining, enjoining, and prohibiting the Louisiana Wildlife and Fisheries Commission and the Louisiana Department of Wildlife and Fisheries, its members, officers, agents, employees, and all persons, firms, corporations or anyone acting or claiming to act on their behalf, or in concert with them, from enforcing the provisions of Act 1316 of the 1995 Regular Legislative Session. This restraining order shall expire at the end of ten (10) days from its date, unless extended by this Court prior to its expiration, for good cause shown and the reasons entered of record.

IT IS FURTHER ORDERED that petitioners furnish a security for issuance of this temporary restraining order in the amount of _____, by surety bond.

IT IS FURTHER ORDERED that defendants Louisiana Wildlife and Fisheries Commission and the Louisiana Department of Wildlife and Fisheries show cause on the _____ day of _____, _____, at _____ o'clock _____.m., why a preliminary injunction, in the form and substance prayed for by petitioners, should not issue, to be effective during the pendency of this proceeding.

On the hearing of this rule, proof may be adduced by verified pleadings, by supporting affidavits, or by proof as in ordinary cases, or by any or all of such methods, at the election of the party offering the proof.

THIS ORDER signed in the City of Baton Rouge, Louisiana, this _____ day of _____, 1995, at the hour of _____ .m.

JUDGE, 19TH Judicial District Court

44

Susan

State of Louisiana



Joe L. Herring
Secretary

Department of Wildlife and Fisheries
Post Office Box 98000
Baton Rouge, LA 70898-9000
(504) 765-2800

Edwin W. Edwards
Governor

Special Commission Meeting
Secretary's Report
August 15, 1995

1. You may have seen the news articles that the Gulf of Mexico fishermen would be receiving \$15 million in aid to the fishing industry. This is part of a larger \$53 million package for the Atlantic and Pacific fisheries. I want to congratulate and recognize Assistant Secretary Corky Perret for his work with Senator Breaux on this package. Corky has spent much time in Washington and on field trips with Senator Breaux on this. Louisiana should get a good share of this money. Plans are being made for our money to be spent on Habitat Improvement; this will benefit all fishermen and all species of fish.

Corky will now spend additional time in Washington or other designated places to work on the plans for the Gulf of Mexico fishermen.

2. We received a call from the Mississippi Wildlife, Fisheries and Parks Department yesterday pertaining to the Charter Boat license. They advised me that they had calls, about 15, from Mississippi sportsmen and some thought it was a get-even because of deer and other out-of-state license fees in Mississippi. I assured them this was not the case. They asked me to call Mr. Jim Walker, President of their Charter Boat Association. I did, Mr. Walker was not upset about the Charter Boat license but was upset because of the high fee. Our license section will call him this morning and discuss the bill in full.

We have had a call pertaining to local charter boats unhappy with the bill.

3. Again I want to recognize and thank the staff of Louisiana Department of Wildlife and Fisheries for the long hours they have put in for the past two months on HB 815-Act 1316. This includes Legal, Office of Fisheries, Enforcement, fiscal, license and others on occasion. This is a very complicated bill and interpreting it has been very difficult. You can see that from the problems we have had this morning for three and one-half hours.

Thank you Mr. Chairman for giving me the opportunity for this update.


Joe L. Herring

State of Louisiana



Joe L. Herring
Secretary

Department of Wildlife and Fisheries
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Edwin W. Edwards
Governor

August 11, 1995

MEMORANDUM

TO: Susan Hawkins
FROM: Joe L. Herring
RE: Commission Meeting

Susan, please put me on the Commission meeting agenda for Secretary's Report; meeting for Tuesday.

Thanks!

JLH/pc

REC'D

AUG 14 95

OFFICE OF WILDLIFE
ASSISTANT SECRETARY

Louisiana Department of Wildlife and Fisheries

NEWS RELEASE

Joe L. Herring
Secretary



CONTACT
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95-187

8/11/95

COMMISSION TO FURTHER DEBATE MARINE RESOURCES ACT

The Wildlife and Fisheries Commission will hold a special meeting Tuesday, Aug. 15, 1995, to discuss implementation of the Louisiana Marine Resources Conservation Act. The meeting, which is open to the public, will convene at 10 a.m. in the Louisiana Room of Department of Wildlife and Fisheries headquarters, 2000 Quail Dr., Baton Rouge.

The Commission met at its regular meeting Aug. 3 and decided to delay taking action on the proposed declarations of emergency and notices of intent in order to further study the proposals and to meet with the authors of the act.

The agenda is as follows.

1. Roll call.
2. Declaration(s) of Emergency and Notice(s) of Intent to implement the Louisiana Marine Resources Conservation Act (Act 1316), including regulations governing:
 - a. Commercial Fisherman's Assistance Program: proof of income and eligibility, schedule of payments for nets.
 - b. Rod and Reel Commercial Gear License: procedures for proof of income and eligibility.
 - c. Gill nets, trammel nets, strike nets, and seines: traverse permit to the exclusive economic zone (EEZ).
 - d. Freshwater commercial gill nets and trammel nets: establishment of a marking system.
 - e. Federal exclusive economic zone (EEZ) regulations governing possession of gill nets, trammel nets, strike nets, or seines; permits, regulation, and enforcement.
 - f. Spotted seatrout: season(s) and entry of commercial fishermen into the fishery.
 - g. Black drum, sheepshead, and flounder: regulations for entry of commercial fishermen into the fishery.
 - h. Mullet: regulations for taking; entry of commercial fishermen into the fishery.
 - i. Any and all regulations necessary or pursuant to the above.
 - j. Any and all other regulations required or authorized by Act 1316 of 1995.
3. Public comments.
4. Adjourn.

August 9, 1995

NEWS RELEASE

APPROVED: 

AGENDA FOR SPECIAL COMMISSION MEETING

A special public board meeting has been scheduled by the Commission for 10:00 A.M. on Tuesday, August 15, 1995, in the Louisiana Room at the Wildlife and Fisheries Building, 2000 Quail Drive, Baton Rouge, LA.

1. Roll Call

2. Declaration(s) of Emergency and Notice(s) of Intent to Implement Act 1316, the Louisiana Marine Resources Conservation Act of 1995, including but not limited to, regulations governing:

a. commercial fisherman's assistance program: proof of income and eligibility; schedule of payments for nets.

b. rod and reel commercial gear license: procedures for proof of income and eligibility.

c. gill nets, trammel nets, strike nets and seines; traverse permit to EEZ.

d. freshwater commercial gill nets and trammel nets: establishment of a marking system.

e. Federal Exclusive Economic Zones (EEZ) regulation governing possession of gill nets, trammel nets, strike nets or seines; permits, regulation and enforcement.

f. spotted seatrout: season(s) and entry of commercial fisherman into the fishery.

g. black drum, sheepshead and flounder: regulations for the entry of commercial fisherman into the fishery.

h. mullet: regulations for taking; entry of commercial fisherman into the fishery.

i. any and all regulations necessary or pursuant to the above.

j. any and all other regulations required or authorized by Act 1316 of 1995.

3. Public Comments

4. Adjourn

Judge blocks law restricting gill nets

Advocate staff report

A state district judge on Monday blocked a new law restricting the use of gill nets and set a hearing date for a legal challenge by commercial fishermen and others in the seafood industry.

The state law was scheduled to go into effect today.

The ruling by District Judge Janice Clark means fishermen can use the nets—at least until the hearing on Aug. 31, said Paul Baier, a lawyer for the plaintiffs.

Fishermen, restaurant owners and others filed suit Friday claiming the gill net law unfairly favors recreational fishermen.

The lawsuit claims there is no scientific basis for the law. The species of fish the law purports to protect are in "healthy supply," the lawsuit alleges.

A proposed ban on gill nets, which are designed to entangle fish by their heads, sparked an intense fight earlier this year in the Legislature. A compromise was reached that placed restrictions on when and how the nets can be used.

The law calls for a ban on gill nets after March 1997.